

DRAFT 5/21/13 – SUBJECT TO CHANGE
For Review and Adoption by DSC at June 27, 2013 Meeting
DELTA STEWARDSHIP COUNCIL
May 16-17, 2013
Ramada Inn and Suites
1250 Halyard Drive, West Sacramento, California

MEETING SUMMARY

Thursday, May 16, 2013, 9:00 a.m. – 4:30 p.m.

1. Welcome and Introductions

The meeting was called to order at 9:00 a.m., May 16, 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, Frank Damrell, Gloria Gray, Randy Fiorini, Phillip Isenberg, and Don Nottoli.

3. Chair's Report

Chair Isenberg made brief remarks on the current scheduled deadline of October 2013 for the BDCP draft Plan and EIR; the State Water Project contract extensions, a process that will be required to be open and transparent; a delay for one year in the remand deadline for the biological opinions for salmon and smelt while at the same time the federal and state agencies will be developing an adaptive management plan; and last he mentioned the Governor's May budget revision was released a few days ago with no significant changes affecting the Council.

4. Executive Officer's Report (Information Item)

There was no Executive Officer's Report and without objection, the Council moved on to Agenda Item 5.

a. Legislative Update

In Jessica Pearson's absence, Chair Isenberg noted the inclusion of the Monthly Bill Tracking Report that was included in the meeting materials.

5. Adoption of April 25, 2013 Meeting Summary (Action Item)

Chair Isenberg asked if there were any questions, suggestions or comments from the Council or the public regarding the April 25, 2013, Meeting Summary – there were none.

However, Councilmember Nottoli noted that on page 7, regarding Ms. Meserve's comment about a place for local agencies on the Implementation Committee, it was still an outstanding issue.

Motion: (Offered by Fiorini; seconded by Johnston) to approve the April 25, 2013 Meeting Summary.

Vote: (7/0: Nordhoff, Johnston, Damrell, Gray, Fiorini, Isenberg, Nottoli) and the motion was adopted.

The video showing this vote can be found at [http://dsc.videosscc.com/archives/051613/Agenda Item 5](http://dsc.videosscc.com/archives/051613/Agenda%20Item%205). Archive Segment Number 2 of 52 at 00:27.

6. Delta Plan (Water Code §85300 (a) (Action Item))

General Note: The Delta Plan agenda item started on Thursday, May 16 and continued on Friday, May 17, 2013. ***In all cases public comment was heard after the motion(s) was offered and before a vote was taken.***

Chair Isenberg began the discussion of Agenda Item 6 by noting the three draft resolutions recommending actions to be taken by the Council at this meeting were: certification of the final Delta Plan PEIR, adoption of the proposed Final Delta Plan and adoption of Proposed Regulations. Chair Isenberg also described the background and supporting documents for the actions.

Next, Executive Officer, Chris Knopp gave brief introductory remarks on the Delta Plan and background on why the DSC was created. Mr. Knopp explained the confusion with BDCP and Delta Plan, gave examples of the differences between them and explained that the BDCP, if approved, will be incorporated into the Delta Plan. Chair Isenberg noted the distribution to the Council Members of information listing the schedule of Council meetings, the public testimony received during the Delta Plan process, including scoping meetings, early action meetings and noted the poster that was located in the room which included the information about the scheduled Council meetings. Mr. Knopp discussed the two additional 15-day comment periods that were completed and noted that they did not result in any significant changes in the Delta Plan, PEIR, or Regulations.

Chair Isenberg noted the four comment letters received the evening before and Chief Counsel Chris Stevens stated that although all comment letters are appreciated, it was important to note that they were received outside the official comment period. He said they would be included into the appropriate record, however, even though staff may respond orally at this meeting, there was no legal requirement to respond in writing. The letters that were distributed were from the Friends of the River, Environmental Water Caucus, Pioneer Law Group and City of Stockton. All are posted on the Council website at <http://deltacouncil.ca.gov/public-comments/read/2219> and <http://deltacouncil.ca.gov/public-comments/read/2218>

Finally, Chief Deputy Executive Officer Dan Ray described the schedule for the day and the meeting materials contained in each of the three binders that were to be used for Agenda Item 6.

a. Consideration of Certification of the Delta Plan Final Program Environmental Impact Report

Jim Andrew and Ellen Garber joined Mr. Ray and led the discussion on the Final Delta Plan Program Environmental Impact Report. Mr. Ray described the actions contained in Resolution 2013-1, Certification of the Final Program Environmental Impact Report – a.) the Council certifies that the Final Delta Plan PEIR has been completed in compliance with CEQA; b) the Council adopts the CEQA Findings; c) the Council adopts the Mitigation Monitoring and Reporting Program for the Delta Plan; and d) the Council directs staff to file a Notice of Determination if the Delta Plan is adopted.

Mr. Andrew explained that before the Council adopts the Delta Plan, it must consider and certify the Delta Plan's PEIR as having been completed in compliance with the California Environmental Quality Act (CEQA).

Mr. Andrew briefed the Council on the CEQA Findings regarding the Delta Plan and the Findings Revisions #1 and #2 (Attachments 1a and 1b) that were handed out at the meeting and are posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%201a.pdf and http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%201b.pdf

The Council was briefed on the Mitigation Monitoring and Reporting Program (MMRP). CEQA requires that an MMRP be prepared and adopted if mitigation measures are adopted. The MMRP lists the mitigation measures included in the Final Delta Plan PEIR and incorporated into the Delta Plan, when they need to be implemented, who is responsible for implementing them, and who reports on compliance. The MMRP will be implemented through the Delta Plan consistency certification process for covered action(s), as a part of GP1.

Public Comment – Agenda Item 6a

Bill Jennings, California Sportfishing Protection Alliance, California Water Impact Network, AquAlliance, commented on water rights and the water crises which he said is causing the estuary to fail. Mr. Jennings felt the cause was obvious, it was due to the failure of the state and federal agencies to enforce and comply with the wide suite of laws enacted to prevent such a crises. Mr. Jennings stated the legislature recognized these failures and created and tasked the Council with developing a comprehensive plan and performance criteria as a framework to guide the agencies with statutory responsibilities of achieving the coequal goals. Mr. Jennings understood that the Delta Plan was to be based upon the constitutional principal of reasonable use, the public trust doctrine as well as being consistent with the water code and he said all are absent

of discussion in the EIR. Mr. Jennings stated since the EIR did not identify and analyze the root causes of California's water crisis, the Delta Plan and EIR was only a ratification of the unsustainable status quo. Mr. Jennings spoke at length on the public trust responsibilities, local self reliance, water supply availability, flow reports, consumptive water rights, etc. Finally, Mr. Jennings stated the Delta Plan and EIR was divorced from reality and failed to comply with the statutory mandates of the Delta Reform Act and CEQA and didn't address the coequal goals.

Jane Wagner-Tyack, Restore the Delta, felt the Delta Plan ignored the fundamental environmental issue and had no appetite to take on the toughest issue – over-allocation of water. Ms. Wagner-Tyack stated she reviewed a SWP planning document, Bulletin 76 from 1960, and in it was a table that showed that after 1981, there would be no more than 3 million acre feet available from the Delta. It projected demand by 2020 to be 8 million acre feet, and in order to meet this predicted demand, 5 million acre feet would have to be taken from north coast rivers. Ms. Wagner-Tyack stated that didn't happen but the allocation of the water went ahead as if it were available and because of that the state has developed a demand that can't be met in a sustainable manner. Because of this dramatic and long standing over allocation of water, no plan can go forward that deals with water supply reliability or ecosystem restoration without addressing this fundamental issue.

Barbara Barrigan-Parilla, Restore the Delta, supported Mr. Jennings' comments and felt the Delta Plan failed to protect the Delta as a place, failed to take on the hard limits in the EIR in terms of water supply, and felt the Delta can't be preserved, protected, enhanced and restored unless there are adequate water flows through the Delta. Ms. Barrigan-Parilla stated the estuary will collapse if it is not determined how much water there is in the Delta to share and had a real Delta Plan been developed, one that first identified how much water was available to be sustainably taken out of the Delta, efforts to provide more water for Californians could be supported.

Nick DiCroce, Environmental Water Caucus (EWC), stated the EWC presented alternatives for achieving water supply reliability and restoration of the Delta that relied on strict enforcement of water quality laws, adopting the Water Board's and Fish and Game's flow recommendations, shoring up existing levees, and stopping the unreasonable use of water to irrigate toxic soils that return pollution to the estuary while providing for exports and water supply along with water conservation measures to ensure existing supplies are extended to meet demand. Mr. DiCroce felt the EIR had significant deficiencies that were in violation of CEQA, such as failing to provide information as requested by CEQA that undermined CEQA's goal of informed decision making and failing to meet CEQA requirements. In Mr. DiCroce's opinion, the EIR must be significantly revised to be adopted. Written Comments were received and are posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/EWC_comment_ltr_051413.pdf

Wendy Buckley Stokes, Restore the Delta, gave a history of Delta agriculture and farming that began in 1850 and included her family's history and a ranch that has been

handed down through the family for six generations. Ms. Buckley Stokes told the Council how on Randall Island, land that has been farmed and handed down from generation to generation is the location for two pumping stations for the peripheral tunnels. As farmers, Ms. Stokes stated their legacy in the Delta is to hand their land from generation to generation and they just want to continue to farm and not have their farm land taken away; live and grow crops from behind safe levees; provide jobs for people and provide money for the economy. Ms. Buckley Stokes stated she felt the Delta Plan was flawed and did not protect agriculture, the Delta or set water standards as well as being a small part of a big picture that is flawed. Ms. Stokes urged the Council to make the changes needed to protect their farms, agriculture and water in the Delta by not adopting a Plan that she felt would destroy the Delta and everything in it.

Kathy Miller, Councilmember for City of Stockton and San Joaquin Delta Coalition, stated the Plan was much better but she had concerns about the proposed regulations having a severe economic impact on the residents of San Joaquin County. Ms. Miller's comments focused on the relationship of the proposed regulations to local governments' efforts to create jobs and lessen the rate of poverty in the Central Valley. After providing context to the history and demographics of San Joaquin County, Ms. Miller urged the Council not to ignore the economic hardship of the residents of San Joaquin County with a Plan that sets roadblocks to their economic recovery. The current version she stated has the unintended consequence of creating uncertainty and instability in local government decision making that in turn scares off capital investment that could jump start their recovery and create jobs. Ms. Miller stated they needed policies from the state that enhance capital formation and job creation, not policies that chill them. Although she has met personally with DSC staff to discuss the current regulation and felt the staff and regulation were well meaning, she thinks the problem is staff interprets the language in a more reasonable and workable manner, but the Plan language still reads in a threatening way and she cited portions/pages that she was concerned with. Ms. Miller stated the language should clearly reflect what the DSC staff was telling local public officials. Ms. Miller felt that even the impression that local government decisions could be subject to an appeal process will generate enough uncertainty to convince a job creating capitalist to avoid the potential risk and locate elsewhere, which is unfair. Ms. Miller requested to meet with the staff and work with them to resolve this issue. Ms. Miller stated the County will offer sample language.

Osha Meserve, Local Agencies of the North Delta and Stone Lakes National Wildlife Refuge Association, spoke on BDCP and the Council's policies to promote it, which she felt paved the way for a project that will devastate the Delta. Ms. Meserve echoed her continuing concern with the economic impacts as described by Councilmember Miller and said she doesn't believe the Economic and Fiscal Impact Statement (Std. 399) addresses them. Ms. Meserve urged the Council to take a step back and look at its duties under the Delta Reform Act, formulate a plan that carries out all of those and then fully address the environmental impacts, cumulative and otherwise, of adopting the Delta Plan.

James Cox, California Striped Bass Association, stated he was addressing the Council as a concerned citizen. Mr. Cox stated he was disappointed with the Plan and felt the

people of California expected and deserved a better plan. Mr. Cox stated the plan's technology is a 20th century attempt to solve 21st century problems. Mr. Cox stated that the Council was promoting a project that will divert more water and spoke on the inadequacy of the current system that he felt wreaked havoc on the Delta. Mr. Cox stated, of the six plans submitted he felt the Council was promoting the one that diverts the most water, had the potential to divert the most water and was the most expensive. Mr. Cox urged the Council to consider the EWC Plan that instead of diverting more water would cut water diversions in half and proposes to use the funds that would have been for the infrastructure to promote recycling projects, conservation, storm water capture and encourage self sufficiency. The EWC Plan, he believes, could lay the foundation for water solving for the next century as the water problems will not be solved by the 30 to 50 year goals set by the BDCP. Mr. Cox felt that if the Delta Plan were adopted, it will harm the Delta.

Bob Panzer, Northern Solano Democratic Club, commented on BDCP and on maintaining water supply and water quality in the Delta. He also commented on BDCP's cost benefit analysis and was concerned that BDCP was proceeding without a comprehensive plan. Mr. Panzer was opposed to BDCP.

Robert Sacher, opposed BDCP and stated if he asked he would vote against it and would ask the Council to do the same because it doesn't offer the potential for sustainable management. Mr. Sacher also believes that there would be severe economic and environmental costs if BDCP is approved. Mr. Sacher stated the Delta was a viable and productive area.

Dick Pool, Golden Gate Salmon Association, commented on salmon recovery and his concern with the Delta Plan's failure to address the recovery needs of the Central Valley salmon. Mr. Pool stated the Delta Plan did not provide a roadmap to restore four species of salmon because, like BDCP, the Delta Plan only addressed habitat changes in the Delta. Mr. Pool cited the statute as it related to increasing salmon populations and felt the Plan failed to address the coequal goals of the legislature. Mr. Pool recommended the Plan be rejected unless it was revised to comply with the intent of the Legislature as it relates to salmon. Written comments were submitted and are posted on the Council website at <http://deltacouncil.ca.gov/sites/default/files/documents/files/GGSA.pdf>

Barbara Daly, Delta resident, commented on the Delta Plan and BDCP. Ms. Daly felt BDCP pits northern California against central and southern California, threatens to raise water costs, and ruins the Delta ecosystem. She urged the Council to work to make a better Plan. Ms. Daly provided written comments that are posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/B_DALY.pdf

Nicky Suard, Snug Harbor, opposed to the Delta Plan and PEIR. Regarding "best available science", Ms. Suard felt it is picking and choosing data to give false impressions and challenges the science that is being used. Ms. Suard submitted written comments that have been posted on the Council website at <http://deltacouncil.ca.gov/sites/default/files/documents/files/Suard%20Comment.pdf>

Steve Herum, representing the City of Stockton, stated Stockton has fully participated in the administrative process concerning the certification of the EIR and adoption of the Delta Plan, however, the city continues to object to the adoption of the Plan in its current form. He requested to focus on two deficiencies he observed in the EIR for illustrative purposes. 1.) a failure of the EIR to address the secondary environmental effects of the proposed regulation and 2.) a failure of the EIR to evaluate the chain of events between the regulatory economic effects and the indirect economic effects that will harm downtown redevelopment and will lead to potential for urban decay in the city. Mr. Herum concluded by stating that an EIR is an informational document meant to provide the decision maker and public with information so that the environmental effects of the proposal are understood. The City of Stockton has provided testimony that there are economic impacts that were not studied in the EIR. They believe the problems can be prevented and requested the opportunity to work with staff to make a better plan. For the record, Mr. Herum requested to introduce a 5/7/13 letter from Steven Chase, Community Development Director for the City of Stockton (given to Ms. Messer (6 pages). The letter is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/City_of_Stockton_comments_PEIR_and_DeltaPlan_050713.pdf

The City of Stockton submitted written comments that are posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/5_8_13_City_of_Stockton.pdf

Burt Wilson, Public Water News Service, made comments on no-project alternatives in the Delta Plan advancing the coequal goals. Mr. Wilson felt the goal of a more reliable water supply is not based on science but rather politics. Mr. Wilson also commented on building developments in the high desert of southern California.

Brenda Burman, Metropolitan Water District of Southern California, stated the final EIR failed to adequately respond to comments they made on the draft and recirculated draft EIR and noted that public water agencies did not receive a copy of the response to comments. She also stated the Project Findings, MMRP, and Statement of Overriding Considerations are legally deficient and request that the EIR be substantially revised and recirculated before continuing. Written comments were received and posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Final_PEIR_comment_letter_Joint_SWC-SLDMWA_051613.pdf

Following public comment, Chris Stevens requested to make short remarks regarding Mr. Herum's comment on behalf of the City of Stockton and a clarification to Ms. Burman's comment. Dan Ray began by addressing Mr. Herum's comment and the suggestion that the Delta Plan will somehow interfere with the development or improvement of public works within the City or its sphere of influence. Mr. Ray referred to the Delta Plan's policy on land use on page XXVI – XXVII (of the redline version) and stated the key policy that controls land use is DP P1 but it is key to look at Part C of DP P1 and important to remember that only actions that are covered by the policy are

regulated by the Delta Plan. This regulatory policy would be effective only if development is outside of areas planned for development, as of the date of adoption of the Delta Plan, in the city or its sphere of influence. Mr. Ray said he had a hard time trying to understand how the policy would affect a project within the city or its sphere of influence. He expressed his opinion as a professional planner, that there was no policy that regulated land use within these areas of the city or its sphere of influence. Mr. Ray also touched briefly on Stockton's concern with its public works that is discussed in the City's general plan that had been previously approved on lands that are located out of the city and its sphere of influence. Mr. Andrew also clarified that speculative impacts only need be noted in the EIR. Mr. Stevens clarified how the EIR had addressed BDCP and he felt it had been dealt with appropriately. Mr. Stevens stated that we were not blindly supporting or paving the way for BDCP and discussed the Delta Reform Act and the Council's role under that act regarding BDCP.

The Council recessed for lunch at 12:15 p.m. and resumed the meeting at 1:15 p.m.

Following the Public Comment, letters of support were provided to the Council from the Nature Conservancy, California Natural Resources Agency, Public Policy Institute of California, and Senator Darrell Steinberg. These letters are posted on the Council website at <http://deltacouncil.ca.gov/public-comments/read/2220>

Motion: (Offered by Johnston; seconded by Nordhoff) to approve Resolution 2013-1, Certification of the Program Environmental Impact Report on the Delta Plan; Adoption of Findings and a Statement of Overriding Considerations, Mitigation Measures, and a Mitigation Monitoring and Reporting Program.

Vote: 7/0 (Nordhoff, Johnston, Damrell, Gray, Fiorini, Isenberg, Nottoli) and the motion was adopted.

Resolution 2013-1 that was adopted by the Council is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/DSC_resolution_2013-1_adoption_PEIR_052813.pdf

The video showing this vote can be found at <http://dsc.videosscc.com/archives/051613/> Agenda Item 6; Index 21. Archive Segment Number 22 of 51 at 28:41.

b. Consideration of Adoption of Delta Plan

Dan Ray introduced Agenda Item 6b. Cindy Messer discussed the final Delta Plan that was included in the member's meeting materials. The proposed final Delta Plan was presented as a "redline" version to illustrate revisions made by staff at the direction of the Council at its March 28-29, 2013 meeting. The revisions included consent items approved by the Council and confirming revisions consistent with Council-directed modifications to the proposed regulations. At Chair Isenberg's suggestion, the Council agreed to discuss the Delta Plan, and then return to the discussion of the Executive Summary. Ms. Messer and Mr. Ray walked through the proposed final Delta Plan, chapter by chapter, answering questions and providing clarification. Next, Mr. Ray and

Ms. Messer were joined by author John Hart and they walked through the Executive Summary answering questions and providing clarification.

Public Comment – Agenda Item 6b:

Bill Jennings, California Sportfishing Protection Alliance, California Water Impact Network, AquAlliance, commented on water rights and flow criteria for the Delta. Mr. Jennings felt the Delta Plan would not be relevant if it doesn't acknowledge flows and the over-appropriation of water rights. Mr. Jennings also commented on the public trust and stated the implications of how the State Board balances the public trust are not addressed.

Nick DiCroce, commented on the reinforcement of key levees beyond the PL84-99 standard. Mr. DiCroce felt that the Delta Plan did little more than maintain the status quo and pave the way for BDCP, which he feels will further derogate the Delta.

John Mills, representing upstream water agencies, commented on efficient use of water, investments in local and regional water management. Mr. Mills felt it was key to talk about context of all regulations. Mr. Mills stated that in the Delta areas, everything has a problem and nothing was perfect and the Delta Plan was a planning document. Mr. Mills urged the Council to adopt the Plan and its regulations and move into implementation.

Paul Helliker, Department of Water Resources, provided the Council with a letter from Secretary Laird that conveyed support for the Delta Plan and urged its adoption. Secretary Laird's letter is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/agency.webex@resources.ca.gov_20130515_161149.pdf. Mr. Helliker shared his perspective and stated he felt the plan was a solid foundation to achieve the coequal goals. Regarding WR P1, Mr. Helliker felt the policy was achievable with reasonable mechanisms in it that will allow agencies to comply. Regarding WR P2, Mr. Helliker stated the water contracts can accommodate the Delta Plan's recommendations. Mr. Helliker stated he looked forward to implementing the Plan.

Greg Zlotnick, San Luis and Delta Mendota Water Authority, stated the Executive Summary had greatly improved and commended the staff, however he offered a technical change of wording for consistency in the Plan on page 11. Written comments were submitted and are posted on the Council website at <http://deltacouncil.ca.gov/sites/default/files/documents/files/san-luis-and-delta-mendota-water-authority.pdf>

Audrey Patterson, San Joaquin Tributaries Authority, made specific comments that have been submitted and are posted on the Council website at <http://deltacouncil.ca.gov/sites/default/files/documents/files/DSC%20Exec%20Summ%20Comments%20-%205.1.13.pdf>

Ms. Patterson noted Chapter 3, page 120, regarding the duties of Delta Watermaster, the Delta Plan recommend he finish the duties of investigating and addressing potential

illegal diversions in the Delta. Regarding WR P1, formerly subsection A & B, Ms. Patterson requested clarification as to if the intent of the policy was still to comply with SBX 7.

Dave Eggerton, El Dorado County Water Agency, commended the staff for working with them to work out the issues to which El Dorado County Water Agency had concerns. Mr. Eggerton urged the Council to adopt the Plan and stated he looked forward to the implementation stage.

Dave Zezulak, Department of Fish and Wildlife, congratulated the staff for getting to this point. Mr. Zezulak felt advancement of the coequal goals to improve water supply was unique and the Delta Plan provided the guidance to achieve that. Mr. Zezulak stated the process had been transparent and he supported the Delta Plan.

Debbie Elliott, Delta resident, submitted written comment but did not speak. Her comments are posted on the Council website at <http://deltacouncil.ca.gov/sites/default/files/documents/files/ELLIOT.pdf>

Connie Skoog, Restore the Delta, requested to comment on Chapter 3, #8, regarding the successful completion of BDCP. Ms. Skoog stated her opposition to BDCP and cited several reasons why. Ms. Skoog said she believes there is no new reliable water supply – only redirected water (through BDCP), which will cause adverse effects in the Delta. She also felt that that levee improvement wasn't being addressed in BDCP.

Charles Gardiner, Delta Vision Foundation, commended the Council on reaching this point and encouraged the adoption of the Delta Plan. Mr. Gardiner highlighted three areas in the efforts that have occurred over the past 2-1/2 years in the development of the Delta Plan: first, taking several of the key concepts of the Delta Vision Strategic Plan, such as the coequal goals and beginning to articulate what they mean for the future of the Delta and California; second, the transparent process; and third, the effort to link actions together – a core principle of the Delta Vision Strategic Plan. He said, however, there is more work to do such as issues with the levees, near-term actions, performance measures, a finance plan and the implementation committee. Mr. Gardiner encouraged the adoption of the Delta Plan.

Barbara Barrigan-Parrilla, Restore the Delta, stated she was heartbroken over what is being passed as a plan to meet the coequal goals, especially in light of the conversation where she felt it was made clear that water users can choose to participate in reducing reliance on the Delta and the idea that a way to reduce reliance on the Delta is to shrink the percentage of water one takes from the Delta while growing the volume. She stated she felt it is necessary to acknowledge how much water is in the system, the Plan will fail. Ms. Barrigan-Parrilla stated they supported the CSPA's comments and will join in litigation if the Delta Plan is adopted.

John Kingsbury, Mountain Counties Water Resources Association, stated he appreciated the opportunity to participate in the process and although there were tough

challenges, he urged the Council to adopt the Plan and looked forward to implementation.

Gary Bobker, The Bay Institute and Natural Resources Defense Council, commented on the need to remedy lack of clarity and guidance in the plan by prioritizing performance metric development and the need to retain and strengthen WR P1.

Kathy Miller, Council Member, City of Stockton and Delta Coalition, reiterated earlier comments on the EIR as they also apply to the Delta Plan and urged the Council to work with local governments to develop binding, clarifying language. Ms. Miller was also concerned with the balancing act of the Public Trust. She urged the Council not to approve a problematic plan and to work with the stakeholders to bring the people of California a Delta Plan that truly works for all.

Brenda Burman, Metropolitan Water District of Southern California, stated it was important for the Delta and looked forward to the Implementation Committee. She commended staff on the improvement of the Delta Plan being easier to read, particularly in the “stressor” section because it addresses hatcheries, moving toward marked select fisheries, nutrients, flow, and other stressors on the system and she stated there are controversial parts of the plan that need to be worked through. Mr. Burman said she was concerned with the Plan regarding the reduced reliance policy and its legal implications, who it applies to and who it doesn’t, clarity and what the policy actually means.

Paul Seger, stated he appreciates the efforts of the Council, however he feel we are hemorrhaging the Delta with the use of water in our cities and farms. It appears to him that we are doing open heart surgery before stopping the bleeding. A system needs to be developed that penalizes and also encourages smarter use of water in the Central Valley and farms in the desert regions. He spoke in opposition to BDCP.

Leo Winternitz, The Nature Conservancy, submitted written comments that are posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Delta%20Plan%20Letter_Support.pdf

John Mills, Offices of John S. Mills, on behalf of the upstream water agencies, pointed out that this has been a long and difficult process. Mr. Mills pointed out that there are varying comfort levels with the regulation and the statewide policy. He suggested language that originally addresses the quantity of only Delta water not watershed water. He felt the Plan has policies and recommendations that have applications that go outside the Delta and urged caution with the additional level of complexity of this regulation and if the word Delta is used, use Delta watershed.

Motion: (Offered by Fiorini; seconded by Isenberg) to approve Resolution 2013-2, Approval and Adoption of the Final Delta Plan

Vote: 7/0 (Nordhoff, Johnston, Damrell, Gray, Fiorini, Isenberg, Nottoli) and the motion was adopted.

Resolution 2013-2 that was adopted by the Council is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/DSC_resolution_2013-2_adoption_final_Delta_Plan_052813.pdf

The video showing this vote can be found at http://dsc.videosscc.com/archives/051613/Agenda_Item_6;_Index_43. Archive Segment Number 44 of 51 at 20:19.

The meeting adjourned for the day at 5:20 p.m.

Friday, May 17, 2013, 9:00 a.m. – 3:30 p.m.

9. Call to Order

The meeting was called to order at 9:04 a.m., with Chair Isenberg presiding. Chair Isenberg summarized the activities of the day.

10. 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, Frank Damrell, Gloria Gray, Randy Fiorini, Phillip Isenberg, and Don Nottoli.

11. Delta Plan (Agenda Item 11 is a Continuation of Agenda Item 6 from Thursday, May 16, 2013)

General Note: The Delta Plan agenda item started on Thursday, May 16 and continued on Friday, May 17, 2013. ***In all cases public comment was heard after the motion(s) was offered and before a vote was taken.***

b. Consideration of Adoption of Delta Plan (Continuation of Agenda Item 6b from Thursday, May 16, 2013)

At the request of Councilmember Nordhoff, the continuation of Agenda Item 6b from the previous day's discussions began with the Executive Summary where Councilmember Nordhoff offered several suggested changes in wording. Councilmember Nottoli also stated his concern with the wording on page 13, third paragraph, which indicated risks in the Delta so as not to imply the Delta was unsafe. Throughout the discussions of the Executive Summary, Cindy Messer and John Hart listened to comments and provided clarification.

Public Comment – Agenda Item 6b *(Continued from 5/16/13)*

Osha Meserve, Local Agencies of the North Delta and Stone Lakes National Wildlife Refuge Association, stated that page 10 refers to BDCP with a single diversion near Freeport. Ms. Meserve stated she didn't believe the reference was correct, because as everybody knows, there will be three diversion points proposed. Ms. Meserve felt the reverse flows problem caused on the Sacramento River (in the north Delta) from the three proposed diversion points was not being addressed.

Following the discussion of the Executive Summary and public comment, without objection from the Council, a recirculated draft of the Executive Summary will return for Council review and approval at the June 27-28 meeting.

The video showing this action can be found at <http://dsc.videosscc.com/archives/051613/> Agenda Item 11; Index 2. Archive Segment Number 47 of 51 at 38:23.

c. Consideration of Adoption of Delta Plan Regulation

Mr. Ray introduced this agenda item and began by reviewing the materials included in the meeting materials. The Final Proposed Regulation, included as Attachment 1a stated that staff was not recommending any substantive changes to the modified proposed regulation based on the comments received during the 15-day comment period (4/8/13-4/22/13). Mr. Ray was joined by Deputy Attorney General Dan Siegel, Consultant Steve Hatchett and Ms. Messer. Mr. Siegel began by explaining the Council's regulatory authority and the comments received on that subject. Mr. Siegel briefed the Council on the comments received on WR P1 and other policies contained in the Plan. Mr. Siegel also explained the appeals provision and land use provisions. Finally, in response to a number of commenters who questioned the Council's right to regulate areas that are also covered by other regulatory authorities, Mr. Siegel explained this issue and how projects may be subject to the regulations of multiple issues as different agencies have different jurisdictions. The draft Master Responses to Comments are included as Agenda Item 6c, Attachment 2b. Throughout the discussions of the Delta Plan Regulation, the panel heard Council members' comments, answered questions and provided clarification. Mr. Hatchett discussed the cost evaluations for the regulations regarding setback levees and levee prioritization.

Public Comment – Agenda Item 6c

Osha Meserve, Local Agencies of the North Delta and Stone Lakes National Wildlife Refuge Association, conveyed her concern about the authority of the Council to adopt the regulations that are inconsistent with the private property rights in both land and water in the Delta, the additional layers of land use restrictions that are contained in the plan, and land use jurisdictions that are inconsistent. The regulations will have additional costs that have not been disclosed. Regarding the enforceability, she felt making the policies enforceable undermines the enforceability of Plan policies if the regulations are not adopted by the Office of Administrative Law.

Motion: (Offered by Nordhoff; seconded by Damrell) to approve Resolution 2013-3, Adoption of the Regulation Implementing the Delta Plan. The Council directs that the Meeting Summary reflect the following: a.) Councilmember Nottoli does not support Section 5013 (RR P2 – Require Flood Protection for Residential Development in Rural Areas), and b.) Councilmember Gray does not support Section 5003 (WR P1 – Reduce Reliance on the Delta through Improved Regional Water Self-Reliance).

Vote: 7/0 (Nordhoff, Johnston, Damrell, Gray, Fiorini, Isenberg, Nottoli) and the motion was adopted.

Resolution 2013-3 that was adopted by the Council is posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/DSC_resolution_2013-3_adoption_Regulations_052813.pdf

The video showing this vote can be found at <http://dsc.videosscc.com/archives/051613/> Agenda Item 11; Index 6. Archive Segment Number 51 of 51 at 08:50 through 09:59.

7. Council Direction Regarding Levee Priorities (Action Item)

The Council is directed to develop and include in the Delta Plan priorities for State investments in Delta levees. The draft Delta Plan and proposed rulemaking package include interim priorities for Delta levee investments. However, further studies are needed to gather the information necessary to update the prioritization. A draft motion has been prepared for the Council's consideration which directs staff to undertake the necessary studies to complete the investment prioritization (Agenda Item 7, Attachment 1).

Motion: (Offered by Johnston; seconded by Nordhoff) to direct staff to undertake the necessary studies to complete the levee investment prioritization.

Vote: 7/0 (Nordhoff, Johnston, Damrell, Gray, Fiorini, Isenberg, Nottoli) and the motion was adopted.

The video showing this vote can be found at <http://dsc.videosscc.com/archives/051613/> Agenda Item 11; Index 6. Archive Segment Number 51 of 51 at 10:30.

12. Public Comment

Chair Isenberg asked if there were any members of the public wishing to address the Council – there were none.

13. Preparation for Next Council Meeting – Discuss (a) expected agenda items; (b) new work assignments for staff; (c) requests of other agencies; (d) other requests from Council members; and (e) confirm next meeting date – June 27-28, at the Holiday Inn.

The meeting was adjourned at 10:56 a.m.