



California
Central Valley
Flood Control
Association

NORTH DELTA WATER AGENCY

May 12, 2010

via email: interimplan@deltacouncil.ca.gov

The following comments on the “Draft Outline of Interim Plan” are submitted (i) on behalf of the North Delta Water Agency (Agency), and (ii) by the California Central Valley Flood Control Association (Association) on behalf of its members in the Delta and its other members that seek to ensure that changes in the Delta do not transfer flood risk to elsewhere within the system.

History and Purpose of CCFVCA

The California Central Valley Flood Control Association was established in 1926 to promote the common interests of its membership in maintaining effective flood control systems in California’s Central Valley for the protection of life, property, and the environment. The Association is committed to improving species habitat when appropriate and compatible with flood safety integrity. Its members consist of more than 70 reclamation districts and other flood control entities along the Sacramento and San Joaquin Federal Project Levee system and non-project levees within the Sacramento-San Joaquin Delta.

History and Purpose of NDWA

The North Delta Water Agency was formed by a special act of the State Legislature in 1973 to negotiate, enter into, administer, and enforce an agreement or agreements with either or both of the United States and the State of California to: a) protect the water supply of the lands within the Agency against intrusion of ocean salinity and b) assure the lands within the Agency of a dependable supply of water of suitable quality sufficient to meet present and future needs. The Agency successfully negotiated and executed a contract with the State of California Department of Water Resources (DWR) in 1981 (1981 Contract), which was overwhelmingly approved by Agency landowners. The 1981 Contract was signed when the Peripheral canal was previously being considered and intended to be an assurance by the State for water supply reliability within the North Delta if and when a Peripheral Canal was built.

Before the dams began withholding much of the Sacramento River system’s high winter flows, the Delta channels stored sufficient fresh water to sustain water quality in the northern Delta throughout and often beyond the irrigation season. Since the dams’ construction and operation however, the Delta now functions more like a flowing stream and, as a result, relatively minor decreases in outflow can have a serious impact on northern Delta water quality.

Delta Stewardship Council Delta Plan Recommendations

The solutions for the Delta proposed in the Bay-Delta Conservation Plan (BDCP) and Delta legislation recently passed by the California State Legislature are on a large scale and will result in significant, permanent changes to the landscape and economy within the Delta region, yet they fail to include assurances and protections for Delta residents.

Despite a willingness to work on a solution for all, Delta residents are often excluded as interested stakeholders. The Council should put a greater emphasis on including Delta residents in the development of a Delta Plan. There is a great deal of local Delta knowledge, experience, and consensus that can be utilized, but is not. For example, the Lower Yolo Bypass Planning Forum, building upon two decades of local

coordination and cooperation, has submitted an alternative to the BDCP's Yolo Bypass floodplain conservation measure, but it has failed to gain traction with the Steering Committee. This is a wasted opportunity that is unfortunate in a climate already rife with conflict and gridlock.

The BDCP Steering Committee does not discuss in detail the EIR/EIS so the Council can play an oversight role in assuring the adequacy of the CEQA/NEPA compliance on many of the issues important to the Delta residents such as economic impacts, flood management, and providing mitigation and assurances for third party impacts. Since Delta stakeholders and elected officials were excluded from negotiations on the Delta legislation last year, we hope the Council will go beyond the letter of the law and attempt to address critical issues requested by the Delta stakeholders, recognizing it is the right thing to do and necessary to gain Delta support for the Delta Plan.

Following are specific actions we recommend for inclusion in the Delta Plan that relate to your call for suggestions on the who, what, when, priority, performance and consequences, and who pays:

- **Honor Local Commitments**
 - Any Delta solution must include guarantees that lands within the North Delta Water Agency will continue to receive both the quantity and quality of water guaranteed under the 1981 Contract. The North Delta Water Agency will take all steps necessary to ensure that the terms and conditions of the 1981 Contract are adhered to in connection with the BDCP process, the Delta Stewardship Council process and any subsequent processes, proceedings or activities undertaken by the State of California or the federal government.
 - Any solution must also respect statutory water supply guarantees applicable to other areas of the Delta, including but not limited to the Delta Protection Act, Cal. Water Code §§ 12201-12204, and the area of origin laws, Cal. Water Code §§ 11460-11465.
- **Coordinate & Integrate Flood Management** – We strongly support the proposal in the preliminary draft outline to “continue levee subvention program.” However, we hope the discussion of how to coordinate and integrate flood protection planning efforts with Delta restoration efforts will be elevated above emergency preparedness and dispel the myth that Delta levees are fragile and prone to massive failure. The Council needs to be the entity to integrate the BDCP and Delta flood management efforts, particularly with the Central Valley Flood Protection Plan. Currently there appears to be little if any coordination between DWR's water conveyance and flood management divisions, let alone with the BDCP. This is of particle concern since the Central Valley Flood Protection Plan and BDCP should be compatible on issues such as what happens when flood water from the mountains hits a 42 mile long canal with 35 feet high levee walls (proposed surface canal) in the middle of the floodplain? Or how is California going to reconcile the USACE's no vegetation on levees policy with BDCP's desire to create more riparian habitat on levees? We are told that flood management issues will be dealt with in the BDCP EIR/EIS, however these documents are not being prepared in a public, transparent process, so again, this is a role that the Council must fill.
- **Include Delta Stakeholders** – For a watershed-scale project such as this to succeed in the long-term, Delta landowners must be treated as stakeholders in the process. The Delta community has been treated as outsiders during both the legislative and BDCP processes. We encourage the Council to develop a feedback loop for addressing local concerns, which is critical to the success of BDCP projects or implementation of a Delta Plan.
- **Quality Data/Scientific Input** - The quality, credibility, and reliability of the Delta Plan or BDCP is only as good as the quality of the data and science that goes into it, and is vulnerable to legal challenge if not adequate. The scientific basis for proposed actions in the Delta needs to be established, documented, and independently verified. This has not yet been done in the BDCP, so is a role that the Council should assume. Modeling assumptions and models must be made public so

that the quality of the operational criteria, habitat projects, and water conveyance, particularly their cumulative impact and interaction with each other can be independently validated.

- **Conveyance Size & Capacity** – The Council should consider analyzing a broader range of facility designs, operations, and conveyance capacities than those currently being analyzed by the BDCP. One question to be answered is, “does size matter?” Large diversion intakes for Delta’s urban populations including Sacramento, East Bay MUD, and Contra Costa are approximately 300 cfs, however most diversion intakes in Delta are less than 30 cfs. Each of the five diversion intakes being proposed by the BDCP are TEN TIMES larger (3,000 cfs) than the largest diversion facility within the Delta, except those at Tracy. BDCP preliminary modeling shows a 15,000 cfs facility can only be used rarely (50% of the time the allowed diversion is less than 4,000 cfs and in critically dry years, 75% of exports will be made at existing South Delta pumps). Apparently bigger does not always mean more. The size of the canal and intakes should be independently evaluated.
- **Conveyance Design** – An unlined, surface canal may conflict with reasonable and beneficial use of water as it unnecessarily wastes water to evaporation and seepage which could be avoided if lined or a tunnel pipeline.
- **Utilize Local Delta Knowledge** - BDCP and Delta legislation have largely failed to utilize local Delta knowledge, experience, and consensus. We strongly encourage the Council to not make the same mistake. For example, the Lower Yolo Bypass Planning Forum, building upon two decades of local coordination and cooperation has submitted an alternative to the BDCP’s Yolo Bypass floodplain conservation measure; however this alternative has not yet gained much traction with the Steering Committee.
- **Alternative Water Supplies** – Last year’s legislation established a state policy of reducing reliance on the Delta to meet future water supply needs through a statewide strategy of investing in improved regional supplies and conservation. Unfortunately, the BDCP Notice of Intent project purpose statement (February 13, 2009) language, “to restore and protect the ability of the SWP and CVP (Projects) to deliver up to full contract amounts,” is biased towards increasing overall diversions from the Delta, potentially beyond historic high levels of export, which is in direct conflict with the legislation. The Delta Plan should analyze the capacity of the Projects to deliver full contract quantities in light of the fact that the Projects as originally designed have not been completed, therefore reducing the amount of water originally promised. Either new sources of water supply need to be called for in the Delta Plan or the quantity able to be delivered needs to be modified.
- **Willing Sellers** – The Delta Plan should make it clear that habitat restoration projects in the Delta implemented through the Delta Conservancy or the BDCP should involve only willing seller landowners. The taking of property in the context of an HCP sets a terrible precedent for future conservation and polarizes rural communities that have been doing their part to protect listed species in the Delta, particularly if the BDCP or Delta Plan are going to rely on the Water Bond to pay for needed habitat mitigation. It is simply inappropriate to use taxpayer dollars to take land for habitat restoration from unwilling parties.
- **CEQA Compliance** – The BDCP’s CEQA/NEPA documents are not being developed or discussed in a public, transparent process. It is important for the Council to provide a public forum to analyze a reasonable range of Delta conveyance size and design, effects on Sacramento River/San Joaquin River flood management, potential effects of each conveyance alternative on Delta water quality, and other CEQA compliance analyses called for in the water legislation passed last year.
- **Benefit v. Burden** - The Delta is being asked to bear burdens of the loss of productive farm land, local taxes, and water quality, however the benefits are accrued by regions outside the Delta. The Delta region is saddled with unmitigated impacts and a disproportionate burden under the BDCP, yet

receives none of the benefits. The Delta Plan needs to address and resolve this inequity to avoid further conflict and gridlock.

- **Delta Mitigation & Assurances** –Landowners and water users should be protected from short-term and long-term “collateral damage” arising from Delta water conveyance infrastructure and habitat restoration efforts. This includes, but is not limited to, regulatory actions that may affect the right to divert (i.e. fish screen requirements) and the timing of diversions. Any Delta solution must include robust and secure “take” authorization for existing, in-Delta covered activities. Assurances must be flexible and open-ended, and must not shift the risk for changed conditions away from the State of California. To the extent that the implementation of new water conveyance infrastructure or habitat restoration programs results in adverse socio-economic impacts to people, businesses or communities within the northern Delta, such impacts must be fully mitigated. Third-party mitigations and assurances must be enforceable and permanently funded. As precedent, third-party protections were provided in the San Joaquin River Settlement.
- **Cost & Who Pays** – This an elephant in room at the BDCP Steering Committee, but has not yet been answered, so is an important role for Council. We recommend that Council’s process include Delta input. It must be recognized that there are no “beneficiaries” in the Delta but that water users in the Delta may be harmed by BDCP actions. These water users need to be made whole. Compensation must include adequate, reliable, and permanent financing mechanisms (i.e. and endowment, annuity, or dedicated stream of revenue), especially for maintenance of habitat properties, neighboring land impacts, and for payment of all local in lieu taxes and assessments due to the local government agencies.

Thank you for considering our initial recommendations for items to be included in the preliminary draft outline for the Interim Delta Plan. Due to the broad constituency represented by our two organizations, the aforementioned recommendations may not reflect a comprehensive list of items, so we respectfully request your indulgence in allowing us to offer additional suggestions as they arise from our constituencies. If you have any questions regarding these comments and recommendations, you may contact me at (916) 446-0197.

Sincerely,



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