

REVISED
DRAFT 3/19/12 – SUBJECT TO CHANGE
For Review and Adoption by DSC at the March 29-20, 2012 Meeting
DELTA STEWARDSHIP COUNCIL
Thursday, March 15 and Friday, March 16, 2012
West Sacramento City Hall Galleria
1110 West Capitol Avenue
West Sacramento, CA 95691
MEETING SUMMARY

Note: Copies of all Council meeting agendas and links for all documents can be found at the DSC website, www.deltacouncil.ca.gov. Specific links are provided in the meeting summary for those items submitted at the meeting.

Thursday, March 15, 2012, 10:00 a.m. – 4:30 p.m.

1. Welcome and Introductions

The meeting was called to order at 10:02 a.m., March 15, 2012, by Chair Phillip Isenberg.

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

Roll call was taken and a quorum established. The following members were present for the meeting: Hank Nordhoff, Patrick Johnston, Gloria Gray, Felicia Marcus, Randy Fiorini, Phillip Isenberg, and Don Nottoli. Absent: None.

3. Chair's Report

Chair Isenberg announced the House of Representatives' passage of the Nunes legislation (H.R. 1837) and stated where it goes in the Senate is not clear. Chair Isenberg also made brief remarks on the two informational hearings held by the Senate Committee on Natural Resources (Chaired by Senator Pavley). Chair Isenberg testified before the committee at both hearings - the first session on February 28, 2012, providing an update on the Delta Plan development. Jerry Meral, Mike Machado, and Campbell Ingram also provided testimony. Those testifying before the Committee at the second reaction hearing on March 13, 2012 included Council member Nottoli (on behalf of the Delta Protection Commission and the Delta Counties Coalition), Roger Patterson, Barry Nelson, and David Nawi. Chair Isenberg stated most comments, but not all, were directed at the Bay Delta Conservation Plan (BDCP). Both hearings are posted on the Council website –

February 28: <http://www.calchannel.com/channel/viewVideo/3370>

March 13: <http://www.calchannel.com/channel/viewvideo/3426>

4. Executive Officer's Report (Information Item)

4a. Legislative and Legal Update

Curtis Miller made brief remarks on the water bond and the budget situation. Mr. Miller stated the Council's budget is scheduled to be heard by the Senate Budget subcommittee on Wednesday and stated the only issue was on the level of reimbursement of federal funds.

Mr. Miller announced the Controller's cash report was released and was \$146 million below the Governor's estimate. Following the comments on the budget, Mr. Miller discussed the list of legislation included in the Council meeting materials and stated the listing included only water and Delta related bills. Mr. Miller noted there were pieces of legislation that would be of concern to the Council: S.B. 1495 (Wolk) and H.R. 420 (Garamendi). Mr. Miller will continue to monitor the bills and update the Council.

Chris Sevens provided his Legal Update after Mr. Zuckerman's public comment and the Council discussion on H.R. 1837. Mr. Stevens explained the federal 9th Circuit Court decision in San Luis Mendota/Westlands v. Department of the Interior (filed on March 2, 2012). The decision capped 14-years of litigation over the meaning of the Central Valley Project Improvement Act's (CVPIA) requirement to allocate 800,000 acre feet of federal project water annually for salmon restoration and other fish and wildlife measures. The Court held in favor of giving the Department of the Interior more discretion as to what they charged against the 800,000 acre feet of water dedication amount. It was seen as a victory for the environmentalists and the salmon doubling requirement in the CVPIA.

4b. Response Letter to Sacramento Area Council of Governments

Mr. Grindstaff provided a brief explanation of the letter to the Sacramento Area Council of Governments (SACOG) that was included in the meeting materials. It was noted by Council member Nottoli that the letter included in the materials was in draft format and clarified that the letter had been finalized and sent. The letter provided input regarding the consistency of the Metropolitan Transportation Plan/Sustainable Communities Strategy (MTP/SCS) for 2035 with the latest draft of the Delta Plan. Since the Delta Plan has not been adopted the review and recommendations were based on the fifth draft of the Delta Plan and identified areas of consistency as well as a need for ongoing and close coordination between the Council and SACOG due to the timing of updates to both plans. The review also included recommendations for ways the MTP/SCS could further promote the coequal goals.

4c. Draft Report to Legislature on Delta Plan Adoption (Water Code §85300(e))

Mr. Grindstaff explained the draft of the report to the Legislature about the Delta Plan's adoption. Preparing and adopting the Delta Plan has taken longer than expected, primarily because of the complexity of preparing and analyzing comments on the programmatic environmental impact report (EIR). As a result, the Council estimates that, by May, 2012 it will complete its analysis and response to EIR comments.

In June, 2012, absent the need for EIR recirculation, it will certify the EIR and approve the Plan for submission to the Office of Administrative Law pursuant to California's Administrative Procedure Act. Mr. Grindstaff stated we anticipate the regulatory provisions of the Plan becoming effective in summer, 2012. The report also included a detailed chronology of Council activities since April 2010. Mr. Grindstaff answered Council members' questions and provided clarification and heard reactions to the draft report. Mr. Grindstaff stated his intent to bring a final report to the Council at the next meeting for their approval.

4d. Update on Zero Based Budget Process

Mr. Grindstaff briefed the Council on the Zero Based Budget Process, stating that 50 programs had been reviewed. Mr. Grindstaff stated that once the Delta Plan is adopted a similar review will be done next fall. Mr. Grindstaff shared a report prepared by the Council's Program

Performance and Tracking Unit, which includes the most current and comprehensive listing of CALFED active programs and projects, and served as the data source for the 2012 Cross-cut Budget Report. This report was forwarded to the Department of Finance and the Legislative Analyst's Office in January 2012. The report is posted on the Council website at http://cppis.deltacouncil.ca.gov/pfs/state_and_federal_fact_sheet_package_2012.pdf

4e. Update on Bay Delta Conservation Plan (Water Code §85320)

Mr. Grindstaff stated that the BDCP had been addressed in earlier discussions and had no further comment on this agenda item.

Chair Isenberg asked if there were any questions or comments on the Executive Officer's report.

Public Comment – Agenda Item 4a:

Tom Zuckerman, Central Delta Water Agency, commented on Agenda Item 4a, specifically H.R. 1837, the Sacramento-San Joaquin Valley Water Reliability Act. Mr. Zuckerman stated he felt it was the most significant legislation rendering the whole Delta planning process largely irrelevant and believed the legislation needed to be discussed to understand the impacts on what the Council is trying to accomplish.

Chair Isenberg and Joe Grindstaff summarized the legislation and Chair Isenberg requested a more careful analysis of how the legislation could impact the Council from a legal and policy standpoint. Chair Isenberg stated the bill's fate is uncertain but was the first time Congress jumped into the middle of water rights issues by proposing to supersede state law. Chair Isenberg and Mr. Grindstaff gave their opinions of the legislation and where it might go.

Council member Fiorini stated he thought it was important to add that he felt the legislation was the result of a broken system for water delivery in California which has resulted in shortages in some parts of the state and has been economically devastating to people - some more than others. Council member Marcus said Secretary Laird sent a letter of opposition to the legislation. A press release that included the letter is posted on the Natural Resources Agency's website at http://www.resources.ca.gov/docs/Laird_on_HR_1837_Opposition_2-15-12.pdf

5. Adoption of the March 15-16, 2012 Meeting Summary (Action Item)

Chair Isenberg asked if there were any questions, suggestions or comments from the Council or the public about the March 15-16, 2012, Meeting Summary. Chair Isenberg requested the acronyms used in Tom Zuckerman's public comments on page 4 be spelled out (PSP - Proposal Solicitation Package and HMP - Hazard Mitigation Plan).

Chair Isenberg asked if there were any other questions, comments or suggestions and as there were none, it was moved (Johnston) and seconded (Gray) to approve the March 15-16 meeting summary as amended. A vote was taken (6/0: Nordhoff, Johnston, Gray, Isenberg, Nottoli. Council Member Marcus abstained from the vote as she did not attend the meeting) and the motion was adopted.

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_0_0.pdf

6. Reports from Other Agencies (Information Item)

6a. Report from the Delta Watermaster (Water Code §85230 (d))

Craig Wilson, Delta Watermaster, appeared before the Council to submit his report to the Council on water issues. The Delta Watermaster is mandated by the California Water Code to submit regular reports to the State Water Resources Control Board and the Council on water issues. Mr. Wilson presented a report “Water Right Compliance and Enforcement in the Delta” to the Water Board on February 7, 2012, and briefed the Council on the report. Mr. Wilson’s report focused on the Water Board’s responsibility to enforce water rights and to prevent unauthorized diversions of water in the state. Mr. Wilson presented a PowerPoint on the report that was posted on the Council’s website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_Delta%20Watermaster_Compliance%20and%20Enforcement%20Feb%207_2.pdf

Mr. Wilson explained Term 91 as “being curtailment of downstream diversions of water released from upstream storage to improve water quality.” He stated that he estimates that junior water right holders will most likely receive letters reminding them of Term 91 next month.

Following the presentation, Mr. Wilson answered questions and provided clarification for the Council members. Chair Isenberg asked if there were any members of the public who wished to comment – there were none.

6b. Department of Water Resources Delta Levees Program (Water Code §85210 (h))

DSC Engineer, Eric Nichol began by introducing the DWR team, Dave Mraz, Eric Kock and Mike Mierzwa.

At the February meeting DWR sent 95 maps to the Council that detailed the current basis of Delta levee conditions. They have been posted on the Council website at <http://www.deltacouncil.ca.gov/delta-maps>. The information included maps constructed by DWR indicating its best estimate of levee miles conforming to existing levee guidance and standards. Two large area maps were provided for public viewing. One map portrayed a Delta-wide view of percentage of levees’ compliance with FEMA’s Hazard Mitigation Plan (HMP) guidance, and by individual islands. The second map portrayed a Delta-wide view of percentage of compliance with the US Army Corps of Engineer’s PL 84-99 standard, and by individual islands. Ninety-three individual island maps that portray levee status and construction activity are posted further down on the web page.

Mr. Mraz presented a PowerPoint that was posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_6b_Attach_4_DWR_Levees_Program_Presentation.pdf. His presentation discussed the history and limitations of the products/maps.

Following the presentation, the panel answered questions and provided clarification for the Council members. At the conclusion of the discussion, Chair Isenberg asked if there were any members of the public who wished to comment.

Public Comment – Agenda Item 6b:

Tom Zuckerman, Central Delta Water Agency, felt progress has been made in the Delta in the last 25 years and stated there hadn't been a levee failure due to high water for 15 years. Regarding levee prioritization, Mr. Zuckerman cautioned the Council not to look at prioritization from the top down but to look at it from a base level up. He felt there are base levels that can be agreed upon then prioritize from the bottom up. The base level would be PL 84-99. Mr. Zuckerman stated more work is going on in the Delta now because of Props 84 and 1E that authorized money to be spent on non-project levees – 50% of the total cost has been from local contributions.

At the conclusion of the comments on Agenda Item 6b, the Council recessed for lunch at 12:50 and resumed the meeting at 1:34.

7. Delta Plan (Action Item)

Mr. Grindstaff began Agenda Item 7 by providing a brief update of where the Council is now, and the process that has brought the Council to where it is. Ninety-one issues have been identified and will be discussed. At the next meeting staff will ask for recommendations. Delta Stewardship Council Chief Deputy Executive Officer Dan Ray and Delta Plan Program Manager Cindy Messer led the discussions of Agenda Items 7a and 7b. Continuation of Agenda Item 7 was heard on Friday, March 16, 2012.

7a. Process for Making Recommendations with Lead to the Next Draft Delta Plan (Water Code §85300)

Delta Stewardship Council Chief Deputy Executive Officer Dan Ray briefly updated the Council on the process for the final preparation and adoption of the Delta Plan. Mr. Ray stated that over the next several months the Council will begin the process of reviewing comments and recommendations on the fifth staff draft Delta Plan and the Draft EIR in preparation for completion and adoption of the final Delta Plan. The staff report provided by Mr. Ray detailed the staff's recommendation for the process. The staff requested that the Council review the recommendation and provide direction to staff about the process for reviewing and approving the final draft of the Delta Plan.

7b. Summary of Major Comments, Themes, and Recommendations about the Fifth Staff Draft Delta Plan, EIR Comments, Fifth Draft Comments, Independent Science Board Comments, Economic Sustainability Plan Recommendations (Water Code §85300)

Delta Plan Program Manager Cindy Messer introduced Agenda Item 7b. In the requested action, staff recommended the Council review the major comments received on the fifth staff draft Delta Plan, as summarized in the staff report, and the staff's proposed responses to them, including potential changes that could be included in the Delta Plan's final draft. It was anticipated that the discussion would begin during this meeting and continue during the March 29-30 meeting when staff would request direction from the Council on preparing the Delta Plan's final draft. Two tables were included as attachments. Table 1 summarized the 20 major comments received on the fifth staff draft Delta Plan's policies and recommendations. Table 2 presented comments and recommendations about the organization, structure, content and terminology in the fifth staff draft Delta Plan.

Ms. Messer and Mr. Ray proceeded by walking through each policy/recommendation that had comments of concern. They discussed each issue with the Council members, providing clarification, answering questions on each of the staff's proposed changes for the sixth staff draft Delta Plan, beginning with GP 1 and stopping at RR P4 (page 9) to take public comment on Agenda Item 7. The discussion would continue on Friday, March 16.

Public Comment – Agenda Item 7:

Joone Lopez, Calavares County Water District, stated her organization has offered specific language and will continue to work with the Council. Ms. Lopez requested that the impacted agencies be included in the Implementation Committee. She felt it was important to understand that the plan was new and there was a lot of concern. But, there was no desire *not* to participate but “buy in” to the plan was needed. She felt the plan should begin with the statute and also should be very specific and clear. Ms. Lopez made comments on WR P1, WR 5 and ER P1. She stated the upstream agencies understand what the right thing to do was, however she felt it was important to look at what was economically practicable. She also stated that the agencies were responsible and had no desire to find loopholes in the WR policies and recommendations. She was pleased the language was removed in ER P 1.

Jim Verboon, Verboon Farms, requested clarification about covered actions, i.e., upstream diversions, water quality and the San Joaquin River. Mr. Verboon promotes enlarging the channel on the east side of Twitchell Island.

Ryan Bezerra, Bartkiewicz, Kronick and Shanahan, stated he appreciated the clarification on covered actions and commented on WR R5. Mr. Bezerra felt the recommendation was not necessary and bringing in Water Code 85021 makes the recommendation a “circular” problem. He said the feasibility standard was still unclear and felt there was a conflict with water rights if Water Code 8532 (i) was included. He suggested the recommendation should not be included as it used vague terms and standards.

Linda Dorn, Sacramento Regional County Sanitation District, commented on WQ P1. Ms. Dorn stated her organization was supportive of water quality and would like to see it maintained, however, she was unable to find the proposed changes in the table and thought it would be helpful to list the entities that proposed the changes.

Charles Gardiner, Delta Vision Foundation, commented on the Delta levees and shared comments from the roundtable discussion on Delta levee security and preparedness that was held on March 1. Presentations from the roundtable are posted on the Foundation's website at <http://www.deltavisionfoundation.org/delta-vision-foundation-resources-legislation.php> Mr. Gardiner felt setting Delta levee priorities with DWR was too slow and unacceptable. He felt there was seismic risk to the Delta levees and it was important to implement near term actions. Mr. Gardiner stated the Foundation had submitted written comments that are posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Delta_Vision_Foundation_031512.pdf

8. Public Comment

Chair Isenberg asked if there were any members of the public who wished to make general public comment – there were none.

The meeting adjourned for the day at 4:44 p.m.

Friday, March 16, 2012, 9:00 a.m. – 3:30 p.m.

9. Call to Order

The meeting was called to order at 9:00 a.m., March 16, 2012, by Chair Phillip Isenberg.

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

Roll Call was taken and a quorum was established. The following members were present for the meeting: Hank Nordhoff, Patrick Johnston, Gloria Gray, Felicia Marcus, Randy Fiorini, Phillip Isenberg, and Don Nottoli. Absent: None.

11. Delta Independent Science Board Report (Information Item)

Due to illness, Dr. Norgaard was unable to attend the Council meeting. Dr. Lauren Hastings presented Agenda Item 11 in his absence. Dr. Hastings noted the draft memos included in the members binders as Attachments 1 and 2. She stated that the two memos had been finalized at the Independent Science Board Meeting and provided copies to the members. Attachment 3 was the memo dated March 14, 2012 and addressed to the legislature regarding the Delta Science Program Requiring Stable Funding. Attachment 4 was the memo dated March 14, 2012 and addressed to the Council regarding Key Issues for Delta Science – A Report of the Delta Independent Science Board. The final memos are posted on the Council website at http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_11_Attach_3_2.pdf and http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_11_Attach_4_0.pdf Following her summarization of the memos, Dr. Hastings announced the resignation of the ISB Vice Chair, Dr. Michael Healey and informed the Council of the newly elected Vice Chair; Dr. Tracy Collier.

Dr. Hastings provided clarification and answered Council members' questions. At the conclusion of Agenda Item 11, Chair Isenberg asked if there were any members of the public who wished to comment – there were none.

12. Continuation of Agenda Item 7 – Delta Plan

Mr. Ray began the continuation of Agenda Item 7 by reviewing the conversation that had taken place the day before to form a better understanding of the Council's expectations for the next meeting. They discussed the revisions the Council requested such as adding alternatives/options and include any suggested language from staff or stakeholders. The Council also would like to see what the staff felt were the controversial issues where staff members were uncertain how to address, along with suggested options, so that the Council members could give direction at the next meeting.

Ms. Messer and Mr. Ray continued the discussion of Agenda Item 7 from the previous day. The discussion had ended at the conclusion of ER R1 to allow time for public comment and resumed with RR P4 (Agenda Item 7b, Attachment 1, page 9). Mr. Ray and Ms. Messer continued the discussion of each issue with the Council members, providing clarification, answering questions on each of the staff's proposed changes for the sixth staff draft Delta Plan.

Following the discussion of each policy and recommendation, Ms. Messer discussed Attachment 2, Table 2 – Potential Editing/Drafting Revisions to fifth staff draft Delta Plan text.

Ms. Messer walked through the matrix and provided background information as well as clarification. She heard comments and took direction from the Council members. Some suggestions were to include a vision statement that incorporated the coequal goals and to employ a writer to improve the readability of the document. Chair Isenberg also requested that the charts and graphics be ready for the Council to approve at the April 26-27 Council meeting and the staff agreed and will schedule that.

The Council took a five minute recess at 12:45 and resumed the meeting at 12:50 to take Public Comment. Chair Isenberg asked if there were any members of the public who wished to make public comment.

13. Public Comment

Ryan Bezerra, Bartkiewicz, Kronick, and Shanahan, commented on Delta flows and provided the Council with copies of the Water Board's Division of Water Rights Protest Petition form, and a copy of the Yuba County Water Agency's petition to modify revised water rights decision, as examples of the problems water districts have that required the "change petition." Mr. Bezerra felt that WR R5 as written would make the "change petition" difficult to achieve. Mr. Bezerra stated he agreed with comments made by Ms. Lopez about cost-effectiveness being a consideration. Mr. Bezerra suggested the Delta Plan discuss how coequal goals are being implemented regarding flows. He felt that several success stories had developed over the years and gave an example of flow implementation on the Yuba River.

Greg Zlotnick, State and Federal Contractors Water Agency, stated he was pleased the Council is moving forward with the levee prioritization issue. Mr. Zlotnick commented on the Water Board's process and felt the Plan needed an independent assessment of language used on flow objectives as it was central to the program. He requested a meeting with staff on the flow language. Regarding WR R1 (page 3 of Table 2), he felt the language in the policy was vague and there was a need for consistency in the language and explicit language was needed explaining feasible in WR R5.

Steven Chappel, Suisun Resources Conservation District, commented on the letter sent by the Council on the Suisun Marsh Final EIR/EIS http://deltacouncil.ca.gov/sites/default/files/documents/files/Item_4e_Suisun_Marsh_Management_Plan_FEIR_Comments.pdf and Delta Plan Policy ER P3. Mr. Chappell stated in his opinion the Suisun Marsh Plan wouldn't be a covered action and thought our comment letter was premature. Mr. Chappel also felt that the Suisun Marsh Final Plan was consistent with the coequal goals. He also expressed concern that ER P3 would be inconsistent and would have negative impacts on existing land use.

14. Preparation for Next Council Meeting

The next Council meeting is scheduled on March 29-30, 2012, across the street at the West Sacramento Community Center in the Community Room.

The meeting was adjourned at 1:10 p.m.