



**State & Federal Contractors
Water Agency**

1121 L Street, Suite 806, Sacramento, CA 95814

Sent via electronic mail

April 19, 2012

Mary Nejedly Piepho
Delta Conservancy
3500 Industrial Blvd.
West Sacramento, CA 95691

Dear Chairwoman Piepho:

The State and Federal Contractors Water Agency (SFCWA) appreciates the opportunity to provide the following and attached comments regarding the Conservancy's draft Strategic Plan (SP) released March 26, 2012. Overall, we find the SP to be well done and consistent with the Conservancy's mission and role as provided in statute. However, through these comments we identify important and specific exceptions to that generally favorable perspective and we look forward to the SP being modified to reflect the concerns expressed and suggestions provided below.

Of particular interest is the lack of specific focus in the SP on the Conservancy developing necessary capacity to take on a management role for habitat projects and lands likely to be initially developed by other entities. The discussion about "leading" a "Delta Restoration Network" overstates the Conservancy's role in planning habitat actions in the Delta, discounts the critical long-term management role of its and potentially others' habitat projects that will be critical to successful ecosystem restoration, and asserts a "first among equals" status that is inappropriate and without substantiation in law. While certainly the Conservancy can and should facilitate improved coordination and work to ensure sponsoring entities and their projects do not work at cross-purposes, that does not mean the Conservancy is "the" leader to develop a master habitat restoration plan for the Delta. While the Conservancy should develop prioritization criteria and protocols for identifying projects to be applicable to Conservancy sponsored projects, they cannot be imposed on others' projects. The Conservancy does not have the authority nor was it given the role to attempt to oversee a "command and control" approach to habitat restoration activities in the Delta. As we note in our specific comments, we hope this was not the intent of the discussion in the draft SP and we suggest the relevant language should be revised to remove such an impression. We would strongly object to the Conservancy seeking to assume an overarching planning and implementation authority vis-à-vis habitat restoration in the Delta that was not contemplated by its enabling legislation.

In addition, the SP does not appear to effectively satisfy the Legislative directive to establish "priorities and criteria for projects and programs". Rather, the SP discusses some aspirational goals and processes to help make progress toward them, but there is very little in the way of specifics related to formulating,

let alone actual identification of, “priorities and criteria for projects and programs” as called for by statute.

Another area of concern is the SP’s various references to the relationship of the Delta Plan to both the Delta Protection Commission’s (DPC) *Land Use and Resource Management Plan* and *Economic Sustainability Plan*. The former must be consistent with the Delta Plan and any element that is not will have to be revised. The incorporation of any, all or none of the latter into the Delta Plan is completely within the discretion of the Delta Stewardship Council. Unfortunately, as written, the SP portrays these relationships in reverse, implying that the DPC’s plans and policies trump the Delta Plan – this is incorrect and language needs to be revised to accurately reflect the primacy of the Delta Plan.

While we recognize that the Conservancy has a multi-faceted mission, we are concerned that the SP perpetuates a supposed priority of preserving agricultural lands as opposed to increasing habitat. We agree that ideally there will be significant expansion of practices that allow for continued farming while also improving habitat values in the Delta. However, the SP incorporates a bias in favor of agricultural preservation to the detriment of the Conservancy’s environmental restoration imperative. The final SP should eliminate that bias.

There is reference to “crediting” habitat acreage creation and preservation of habitat values on agricultural lands. We are unclear what this concept means with respect to the Conservancy which is not a regulatory agency. Just dropping this loaded term into the SP at various spots is confusing, injects unnecessary uncertainty into the SP, and ultimately seems out of place. More background as to how and why this concept was derived and included would be helpful, though we are skeptical that it should remain in the document.

It should come as no surprise that after spending many years and hundreds of millions of dollars, SFCWA member agencies are especially sensitive to the relationship of the Conservancy to the Bay Delta Conservation Plan (BDCP). As supporters of the Conservancy’s creation, we remain confident that it can provide significant value-added to a more coordinated and collaborative approach to the extensive habitat restoration activities that will be taking place in the Delta in the coming decades. However, as noted above and in the attached comments, there are some areas of the SP that raise serious questions as to whether the Conservancy is on the right or wrong track to play such a constructive role. We look forward to working with you to ensure the former is the case.

Sincerely,



Byron M. Buck
Executive Director

Attachment.

STATE AND FEDERAL CONTRACTORS WATER AGENCY COMMENTS
RE: DELTA CONSERVANCY DRAFT STRATEGIC PLAN [3.26.12]

P 8 / L 1-6: While environmental protection and economic well being are identified as “co-equal”, there is no environmental action listed in the description of “efforts” to be made. Seems like adding “habitat restoration” or something like that would be appropriate, and necessary, to include.

P 10 / L 1-3: The Delta Protection Commission’s *Land Use and Resource Management Plan* (LURMP) should not be considered dispositive of any delineation of Delta lands until it has been reviewed by the Delta Stewardship Council for consistency with the Delta Plan. Any part of the LURMP that is inconsistent with the Delta Plan will have to be revised to be consistent with the Delta Plan.

P 10 / L 5-7: The use of the \$3 billion figure should clarify whether that applies to the primary zone or secondary zone or legal Delta or the Delta Counties cumulatively.

P 20 / L 17-19: What does SWRCB flow criteria for the Delta and its tributaries have to do with the Conservancy’s activities? Don’t understand why this is mentioned at all.

P 20 / L 21-22: Reference to Delta Plan performance measure “seeking maintenance or increase of gross revenues of Delta agriculture” is incorrect. This was announced as a “mistake” at DSC meeting when first discussed DPC’s ESP. It should not be included in Conservancy’s document. Points out general problem of referencing anything in 5th Draft of the Delta Plan as definitive since all indications are 6th Draft will be significantly revised.

P 21 / L 9-10: Reference to Water Code Section 85320(a) should be replaced with reference to Water Code Section 85320(e) which mandates “the council shall incorporate the BDCP into the Delta Plan” if certain criteria are met. Only referencing 85320(a) leaves the reader with the impression that incorporation of the BDCP into the Delta Plan is a discretionary action of the DSC, and it is not.

P 21 / L 17-29: This overstates the case as any part of the LURMP that is inconsistent with the Delta Plan will have to be revised or deleted. The various “Land Use Policies” cited are still all subject to consistency review against the final Delta Plan.

P 23 / L 11-13: As with the LURMP, the DPC’s Economic Sustainability Plan is also subject to consistency review by the DSC as measured by the final Delta Plan and incorporation of ESP recommendations, if any, is within the complete discretion of the DSC. This potential constraint should be noted.

P 27 / L 14-17: This citation to the statute regarding the Legislature’s charge to the Conservancy regarding the content of its Strategic Plan should be moved up front and is telling in that the current draft Strategic Plan does not really satisfy the Legislative directive as there are no specific “priorities and criteria for projects and programs” included in the document. It is very general and “preservation of agriculture-centric” which is only one aspect of the Conservancy’s mission and being outcome descriptive with regard to process participation and general aspirations does not equate to specific “priorities and criteria for projects and programs” nor identifying specific projects and programs themselves.

P 30 / 14-16: When it is stated the “Conservancy does not intend to support programs or activities that produce impacts that are not mitigated” it begs the question of who decides? Is this only in reference to the Conservancy won’t undertake such projects itself? Does it mean that it won’t engage with projects

initiated by others that may have unmitigable impacts? The latter would seem problematic and counterproductive. If the former, it is a bit more understandable but it does not make it good policy. There will likely be projects that would be important to pursue consistent with the Conservancy's mission that will have some unmitigable impacts or for which mitigation may not seem "adequate" to some parties, including potentially Conservancy Board members. This is biting off one's nose to spite your face and should be deleted or revised to stress the Conservancy's prioritizing projects that are mitigable.

P 31 / Box: Assuming the goals are not listed in any particular order, it should be stated that is the case. If they are in order of priority, then it seems that Goals 7 and 8 should be moved to the top as without an effective organization and funding nothing will happen.

P 40-41 / 32-3: This section and this sentence in particular imply the Conservancy taking upon itself a leadership role that it was not given by its authorizing legislation. Throughout the document the statement is correctly made that the Conservancy is a primary agency for restoration activities in the Delta. There is no first among equals. This section and sentence should be revised to suggest that the Conservancy will work with other entities on a coordination and collaboration framework without referencing itself as "the primary convener" and "the primary facilitator and synthesizer". As this reads, the Conservancy seems to seek to impose its perspective on others rather than work in a collaborative manner to develop a mutually acceptable framework.

P 41 / L 7-9: The notion of the Conservancy "crediting" "conservation values" is confusing since the Conservancy is not a regulatory agency per se, so "crediting" to what and for whom and why, are all unanswered questions.

P 41 / L 10-11: It is unspecified what the relationship of the "Delta Restoration Network" is to the BDCP and there seems to be an expectation that any entity involved in restoration activities in the Delta would have to engage with the Conservancy and be subsumed in this process. Is that the intent? If so, based on what authority? If an effort to provide voluntary opportunities for coordination and collaboration and joint priority setting, the language should be revised to reflect that rather than asserting a command and control model. In essence, the narrative seems to go well beyond the concepts included in the box on page 42.

P 42 / L 16-17: See comment above per P 41 / L 7-9 regarding "crediting" and unanswered questions.

P 42 / L 22: Replace "Lead" with "Facilitate". This is more consistent with Conservancy role as envisioned by Legislature.

P 43 / L 13-14: See comment above per P 41 / L 7-9 regarding "crediting" and unanswered questions.

P 44 / L 11: What does "broker mitigation projects" mean? This should be explained.

P 44 / L 19-22: What is purpose of purchasing "existing available mitigation credits"? This should be explained.

P 65 / L 14-18: See comments above regarding Conservancy overstepping role vis-à-vis other actors and uncertainty regarding relationship to BDCP restoration activities.

P 65-66 / L 33-1: What does “While the Conservancy would still pursue its objective of defining restoration criteria for the Delta even with the BDCP” mean? This implies potential conflict and working at cross-purposes rather than consistency and collaboration.

P 67 / L 17: See comment above per P 41 / L 7-9 regarding “crediting” and unanswered questions.