



SOLANO COUNTY
Department of Resource Management

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Bill Emlen, Director
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September 29, 2011

Mr. Joe Grindstaff
Executive Officer
Delta Stewardship Council
990 Ninth Street, Ste 1500
Sacramento CA 95814

Re: Fifth Draft of the Delta Plan: Solano County Comments

Dear Mr. Grindstaff:

The County of Solano stands by its previous comments and continues to monitor and comment, as appropriate, on successive drafts of the Delta Plan. This letter focuses on Draft 5 and the changes proposed between this and prior drafts. Our comments are provided on a chapter by chapter basis.

As noted in our previous comments, Solano County has significant concerns with the pace and objectivity of Delta Plan development. Plans to date largely ignore the key stakeholders that will be directly impacted by the Plan's implementation. Counties could be a vital part in the success in the Delta Plan, regrettably the Plan relegates Counties to a bit part.

We respectfully request your consideration of our comments. We also ask that the current pace of the planning process, as previously noted, be evaluated to ensure that the final product captures stakeholder input and meets the intent of the Legislature.

Building & Safety
David Cliche
Building Official

Planning Services
Mike Yankovich
Program Manager

Environmental
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Terry Schmidtbauer
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Su Krishnan
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Paul Wiese
Engineering Manager

Public Works-
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Operations Manager

Fifth Draft of the Delta Plan: Solano County Comments
September 29, 2011

Thank you again for further considering our comments.

Sincerely,

A handwritten signature in cursive script that reads "Bill Emlen". The signature is written in black ink and extends across the width of the page.

Bill Emlen, Director
Solano County Resource Management

cc: Solano County Board of Supervisors
Birgitta Corsello, Assistant County Executive
Delta Counties Coalition
David Okita, General Manager, Solano County Water Agency
Mike Hardesty, General Manager, Reclamation District 2068
Steve Chappell, Suisun Resource Conservation District

Attachments:

1. Chapter Specific Comments
2. Suggested Master Planning and Consultation Text Inserts

RDrive:Admin:Director:DeltaPlanDraftFive

CHAPTER SPECIFIC COMMENTS

Preface

- The thirteen bullet on page 8 references creation of a Delta Flood Risk Assessment District that will provide local authority to sustainably fund and implement a regional plan of flood management, levee inspections, risk assessments, and coordinated emergency response. This type agency should only be developed with a full public process that provides an opportunity for Delta flood control organizations (including all potentially impacted reclamation districts and water agencies) to identify their concerns and have these addressed prior to approval or implementation of this sort of entity. A detailed financial analysis of ongoing funding requirements should be developed and that would not transfer liability from the State to this type regional entity and potentially jeopardize the interests of Delta taxpayers. An ongoing source of guaranteed sustainable funding would be an absolute necessity for such an entity.
- The third bullet on page 9 discusses amendments to AB 3030 and SB 1938 to allow local agencies to assess fees for groundwater management under Proposition 218. Is everyone in the state going to be subject to these fees or does this type fee apply only to direct users of groundwater use? Would there be a broader “beneficiaries” category that would be applicable, and if so, how would this group best be described?

Chapter 3

- Solano County is concerned that the covered action process will produce a layer of administrative requirements that the neither State nor local government will be able to easily fund or enforce.
- Most residents and other key stakeholders are not aware of State and Federal proposals that will impact their taxes, environment, economy, jobs, infrastructure, water quality, water supply and business interests.

Chapter 4

- The chart on page 70 describes where California water goes. Do you have any information on what the most desirable mix/balance would be for a combination of agricultural, urban and environmental water use?

Chapter 5

- Solano County strongly recommends inclusion of a clearly defined and structured consultation process with counties and other local entities that will be impacted by implementation of the Delta Plan. This consultation process should require preparation of a specific master plan for areas that might be converted. It should allow agricultural and other local economic and ecosystem interests who know the local environment and infrastructure to participate in creating plans that will lead to

compatible co-existence. This type consultation process should include procedures and criteria for determining impacts along with commitments to finance and fully mitigate those impacts.

- One of the habitat restoration projects that is recommended to move forward is the Cache Slough Complex. Solano County requested and had an initial meeting with Department of Fish & Game and Department of Water Resources staff to discuss how we can work collaboratively on Prospect Island restoration issues. When possible and appropriate, the County is committed to working collaboratively with State and Federal representatives to find mutually beneficial ways to protect local interests. Collaborative efforts may include layering habitat restoration opportunity areas for species with local habitat conservation plans within the same area.
- The first bullet on page 126 under the subheading Administrative Performance Measures says that the SWRCB adopts and implements Delta flow objectives by June 2, 2014 and adopts flow objectives for the major tributary rivers to the Delta by June 2, 2018. Until such objectives are adopted, there must be enforceable assurances for the preservation of existing water quality standards.
- The second bullet on page 127 under *Driver Performance Measures* refers to pilot-scale Delta habitat restoration projects being developed and initiated in the priority areas described in ER R1. Particularly because of these type projects have clear adaptive management plans, this measure should include the effectiveness with which State and local interests are engaged in the process, with early consultation, ongoing plan development, implementation and evaluation.

Chapter 6

- Chapter 6 lacks clarity concerning how the system will work operationally to avoid adverse impacts on overall fresh water flows through the Delta and into the Bay system. The County needs assurances that any system implemented maintains adequate flows to meet the needs of senior water right holders with no impacts on existing allocations. There must be sufficient flows to prevent salinity intrusion further into the Delta so protections required by the Suisun Marsh Plan are adhered to.

Chapter 7

- According to the California Central Valley Flood Control Association (letter to Delta Stewardship Council dated June 13, 2011), "Since the Delta levees improvements have been implemented over the last 23 years, pursuant to SB 34 in 1988 (Delta Levees Program), nearly *all* levees in the Delta are *above* the 100-year floodplain, and the failure due to high tides or high flows has been essentially eliminated." As a result of the success of this program, the Council should recommend that the Legislature approve legislation to eliminate the sunset date (July 1, 2013) on the existing Delta Levees Program as currently defined, Water Code Section 12986 and 12987.5, since it has proven itself to be a successful and cost-effective program over the last 23 years.
- On page 165 of Chapter 7, Reduce Risk to People, Property, and State Interests in the Delta, it says the following under Policies RR P1 and RR P2:

- RR P1 Floodways shall not be encroached upon nor diminished without mitigating for future flood flows. This policy does not apply to ecosystem restoration projects or any ongoing agricultural or flood management activities unless they significantly decrease the existing level of flood protection.
- RR P2 The following areas shall not be encroached upon because they are critical floodplains and may also provide ecosystem benefit (refer to Figure 5-3). This policy does not apply to ecosystem restoration projects or any ongoing agricultural or flood management activities, or maintenance and repair of existing infrastructure, unless they significantly decrease the existing level of flood protection.

The above exemption should not exist for either ecosystem restoration projects or flood management activities. This would allow a free pass on these types of activities and the measure of “significant” is undefined. The existing level of protection currently afforded by the floodways should never be degraded or traded away for either of these activities. This would be a direct and condoned increase in the flood risk of areas protected by these floodways. These impacts should be fully mitigated.

The current standard is “no hydraulic impact.” This is the standard that was applied to the Vic Fazio facility and the Wildlands Phase 1 project on Liberty Island. Solano County’s concerns arise from the interpretation of what “significantly” means; that would likely be a moving target depending on the perceived value of the proposed project and who the project proponent would be.

There is then the issue of determining how much flood risk reduction is permissible. At a time where the state is attempting to reduce its liability for flood-related damages, it cannot be appropriate to suggest, much less create policy that says it is alright to raise flood risk if it is “not too much.”

Also, the qualification is the “existing” level of flood protection. What about floodways that are already oversubscribed or surcharged to levels exceeding their authorized designs, such as the Yolo Bypass; can we support an additional reduction of flood protection above the already degraded floodway performance? This would appear to create a new and lower current baseline level of flood protection that does not account for existing deficiencies, and this is not appropriate. There is no “one size fits all” answer to the question of how much flood risk is acceptable, but this should be a local decision.

As to determining flood performance impacts, hydraulic modeling can provide a measure of the hydraulic effects of projects, but validation of model results can only be done by observation and correlation with actual events. The model assumptions, such as hydraulic roughness and future conditions, need to be reliably estimated and those conditions, if they change, will alter the level of hydraulic performance. Therefore, is close good enough, and will the project conditions remain stable throughout the ecosystem restoration project life span? Solano County believes that flood operations should be the paramount concern.

- Regarding Recommendation RR R7 to “create a Delta Flood Management Assessment District with fee assessment authority (including over State infrastructure) to provide adequate flood control protection and emergency response for the regional benefit of all beneficiaries...and other entities that benefit from the maintenance of the levees, such as water exporters who rely on the levees to protect water quality,” it will be critical to carefully analyze the liability implications associated with development of this type entity and its financial impact on participating agencies. Although details regarding the structure, method of assessment, participants and public process involved to establish this type district are unclear at this time, there should be no transfer of liability from the State and full funding should be part of any such proposed entity.

Chapter 8

- The Delta is an interconnected region that must be strategically analyzed, protected and equipped (or structured) to ensure sustainable and increasingly marketable, economically viable communities with growing economies and vibrant agricultural industries that support the culture, business, technology, recreation, and critical infrastructure necessary to be economically, socially, agriculturally, environmentally and technologically robust. A publicly vetted, regional strategy that includes broad stakeholder input is required to ensure the current and future sustainability of the Delta.

The Delta community is comprised of many towns, businesses, farms, schools and homes, has its own history and culture, and an economy based on the health of those farms and communities. To ensure the viability and sustainability of the Delta region, agreements must be made to protect, maintain, and where possible, enhance and restore the overall quality of the Delta environment, including but not limited to agriculture, wildlife habitat, and recreational activities; assure orderly, balanced conservation and development of Delta land resources and improve flood protection by structural and nonstructural means to ensure an increased level of public health and safety.

Solano County believes the goals outlined in the Delta Vision Strategic Plan (page 24)—Strategies under Goal 2 are helpful: Recognize and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place, provided some of the following actions critical to achieving the co-equal goals:

- Apply for federal designation of the Delta as a National Heritage Area, and expand the State Recreation Area network in the Delta.
- Establish market incentives and infrastructure to protect, refocus, and enhance the economic and public values of Delta agriculture.
- Develop a regional economic plan to support increased investment in agriculture, recreation, tourism, and other resilient land uses.
- Establish a Delta Investment Fund to provide funds for regional economic development and adaptation.

- Adopt land use policies that enhance the Delta's unique values, and that are compatible with the public safety, levee, and infrastructure strategies of Goal 6 (Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and strategic levee investments.)
- We see key elements of a sustainable and vibrant Delta as Place that includes a Master Planning process that provides linkages for the entire Delta and incorporates local consultation to ensure ongoing regional viability and development of recommendations that will result in the growth and future prosperity of this region. Solano County is closely observing the Economic Sustainability Plan process being carried out through the Delta Protection Commission. Although it would have been most helpful if the Legislature had provided adequate time and funding for this program, it is essential that thoughtful analysis (that includes public input) be incorporated into a planning process for the Delta region, and weave together a strategy for agriculture, recreation, business, infrastructure, technology, the economy and the environment. This type plan should include a clear timeframe horizon that links all key activities; a strategy to evaluate and to adjust the plan at regular intervals as necessary; and a robust public information process that provide counties and other local entities easily understandable information that can be provided to their communities.
- Solano County would like to have provisions in place to ensure consultation with local agencies and counties regarding recreation proposals and evaluation of local impacts. The consultation process should require early preparation of specific master plans for areas that might be considered for recreational activities. The master plan process would allow agricultural and other local economic and ecosystem interests who know the local environment and infrastructure to participate in the crafting of plans that would lead to compatible coexistence. The consultation process should also include procedures and criteria for determining impacts and both the commitment and financing to fully mitigate those impacts and cover ongoing maintenance and operational costs. The Stand Lands Commission must be more respectful to recreational uses on lands they have authority over.

Chapter 9

- A Guiding Principle should be developed that protects Delta communities from the negative impacts of changes imposed by the State or the Federal governments. For instance, when habitat is created in a new location and water quality standards are negatively impacted, an exclusion from the additional cost of water quality mandate enforcement should be provided to the impacted entity.
- FP R6 requests that the Legislature authorize the Delta Stewardship Council to develop reasonable fees for beneficial uses and reasonable fees for those who stress the Delta ecosystem, and apply these fees to the operational costs of the Delta Stewardship Council, the Delta Conservancy, and the Delta Protection Commission to allow implementation of the Delta Plan. This appears to create a potential conflict of interest and it is recommended that an outside entity develop these fees and

the Legislative Analyst Office should review and critique any such proposal and ensure that this function is regularly audited and reported on in an open and transparent manner.

- A section should be included on mitigating impacts of Delta Plan implementation. This section should include information on economic impacts of land conversions, urban and agricultural runoff and discharges, Endangered Species Act and local government impacts. This should include a discussion of the standards or processes that will exist to provide for the financial stability and sustainability of Delta communities that will be most significantly impacted by State and Federal proposals to move water out of the Delta.
- Local Delta governments and landowners should not have to bear the burden of paying for modeling, monitoring, data collecting or facility improvements that are necessary to achieve objectives that benefit the entire state.
- Funding for water supply and ecosystem restoration projects should be in place before projects are initiated.

Federal/State Agency Consultation with Counties and Local Agencies

Achieving the co-equal goals of the Delta Plan will necessitate changes in today's Delta fabric. The thousands of acres of land slated for conversion to habitat projects will potentially take out of production very fertile agricultural lands and will impact existing Delta communities and underlying economics of the region. Careful and coordinated planning and engagement with the Delta communities and the local governmental entities that support those communities could reduce impacts and further the Plan's objectives. Accordingly, the following procedures shall be followed as habitat projects are contemplated and initiated.

Pre-project Master Planning

A conceptual Habitat Restoration Master Plan and Policy Framework shall be prepared by the proponent agency for each County within the legal Delta prior to initiation of any habitat restoration project within an affected County jurisdiction. Plan preparation shall include early formal consultation with County agencies (counties will coordinate outreach with local communities and special districts). The conceptual plan shall consider:

- Habitat patterns that protect prime farmlands for continued agricultural use and reasonable agricultural operations. Every effort should be made to avoid fragmenting viable agricultural areas and disrupting access to key agricultural infrastructure.
- Impacts on county circulation network and emergency response capabilities.
- Impacts on flood control and levee networks.
- Impacts on the social and economic fabric of established Delta communities. Retention of existing communities and their underlying viability shall be a key consideration.
- Impact on local water diversions and conveyance systems.
- Other local issues and considerations as identified during the consultation process.

Review of Specific Habitat Projects

Prior to initiation of any habitat project, the affected county and other affected local entities (i.e. special districts, etc.) shall be consulted for review of detailed plans and support documentation. Project plans shall be reviewed for consistency with the countywide conceptual Master Plan and other local planning documents such as the County General Plan. Every effort shall be made to establish a pre-project agreement with the affected county or local agency that addresses how the co-equal goals of the

Delta Plan can be met while minimizing impacts on the local county or agency. Absent an agreement, the following, as applicable, must be initiated and addressed:

- Mitigation for farmlands lost due to conversion to habitat projects per standards established in local ordinances.
- Preparation of an economic analysis to qualify impacts to the local economy including fiscal impacts to local government. If impacts are identified, a funding commitment would be required and a funding source identified to fully compensate local government and communities for the identified impacts including, but limited to, loss of property and sales taxes. The economic analysis must also consider third party impacts and potential additional public safety costs caused by increased public access and recreational activities in restored wetland areas.
- Relief from future restrictions or conditions on urban discharge and runoff due to the existence of new habitat.
- Extend ESA take protections to existing agricultural operations and runoff so as to avoid potential restrictions resulting from the introduction of rare or endangered species in newly created habitat areas.
- A hydrologic and hydraulic analysis of possible short term and cumulative impacts on the flood control system caused by proposed habitat restoration projects. Any impacts should be mitigated so as not to harm the integrity of the existing flood control system and local properties in the vicinity. Funds shall be provided to ensure system is retained or restored to design level or higher.
- Identification and commitment of funds for long- term maintenance of habitat restoration area.
- Identification and commitment of funds for long term maintenance of levees in the vicinity of a habitat restoration project including funds for reinforcing levees needing upgrade to compensate for project impacts that might otherwise compromise the integrity of the existing system.
- Development of a public outreach program to ensure Delta communities are advised and fully aware of changes that will impact them.
- Other measures necessary to mitigate local impacts while ensuring the co-equal goals of the Delta Plan are met.