



DELTA WETLANDS PROJECT

May 6, 2011

Mr. Phil Isenberg, Chair
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA. 95814

RE: Third Staff Draft Delta Plan Comments

Dear Chairman Isenberg and Members,

Thank you for yet another opportunity to provide our comments and recommendations on the Draft Delta Plan. The third draft is a great improvement over the second.

In general, our comments seek to:

1. **Clarify the standard of review for determining consistency.** Because the Plan is encompassing and ambitious, and because specific covered actions will have more limited goals, it is important that consistency determinations be a balancing process. Most covered actions will address something less than the full set of Plan objectives, and no covered action will address all Plan goals equally. Consistency determination should not require all things from all projects. The fundamental obligation of consistency should be that a project assess its impacts on Plan goals (positive and negative) and not render any of the goals unattainable.
2. **Clarify the application of best available science and adaptive management to specific covered actions.** While the concepts are clear enough, and their application to planning activities such as the Delta Plan and BDCP seems fitting, their application projects with limited purpose and user funding is problematic. As one observer said, "how does best available science apply to a hotel?" We do not believe that the financial capacity of a project proponent is a reasonable or workable criteria for consistency determination.
3. **Make sure that covered action project approvals and consistency determinations are not put on hold due to the SWRCB not meeting its Plan goals.** We have recommended language that we believe addresses the Council's concerns without the

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potential for unintended consequences associated with a de-fact moratorium on covered actions.

4. **Modify the use of the Ecosystem Restoration Program Conservation Strategy** for Stage 2 Implementation to fit with its nature as a concept document rather than a prescriptive plan. Some of the strategy recommendations are mutually exclusive, so it is not possible for proposed covered actions to incorporate all elements of the strategy.
5. **Make sure that adaptive management doesn't unravel the beneficiaries pay principle or project financing** by providing financial compensation to project beneficiaries who paid for a covered action, when project benefits are substantially reduced due to adaptive management actions.

Our detailed comments are provided below.

Standard of review (new language added to page 39 line 12): Determination of consistency needs to be done on a “balancing” standard. No specific covered action will be able to meet all Plan objectives equally, and any more rigid standard of review will not work in as complex a setting as the Delta.

More than one regulatory policy in the Delta Plan may apply to a covered action. The first obligation of all covered actions is not to render any regulatory policy unattainable. In making determinations of consistency, the Council acknowledges that there is an inherent tension between the coequal goals. The Council recognizes that not all covered actions are equal, that some covered actions will meet some Plan objectives better than others, and that no covered action will be able to advance all Plan objectives equally. Accordingly, in making consistency determinations, the Council will make judgments on the merits of a proposed covered action on balance, and taken as a whole.

Best available science and adaptive management (revisions to Policy G P1 starting on page 39 line 33): Clarifying the application of best available science and adaptive management to specific covered actions. The use of best available science and adaptive management is simple in concept but complex when applied to specific projects. Not all decisions benefit from the same science. Tools must be selected appropriate to the task. And adaptive management measures need to be tailored to the goals of specific covered actions. Consideration of financial capacity is inappropriate and unworkable in this context.

G P1 Certifications for consistency with the Delta Plan must address the following:

1. All covered actions must be fully transparent by disclosing all potentially significant adverse environmental impacts and mitigations of those adverse impacts.
2. All covered actions must ~~be based on reasonably utilize~~ best available science in project design, environmental review and permitting. Determination of the best available science appropriate to specific decisions will be made through consultation

between the project proponent and responsible and permitting agencies. **[COUNCIL TO DISCUSS FURTHER]**

3. All covered actions must demonstrate managerial ~~and financial~~ capacity to implement the covered action over the long term. Managerial capacity includes ~~ownership property interests~~ and water rights relevant to the covered action. ~~Financial capacity includes budgeting, capital improvement planning, and a financing plan relevant to the covered action.~~
4. All covered actions must identify and comply with existing relevant law, including water quality regulations and water rights.
5. Large-scale ecosystem restoration and water management covered actions must include adequate provisions to assure continued implementation of adaptive management consistent with the Delta Plan specific covered action's goals. This requirement shall be satisfied through:
 - φ an adaptive management strategy for the specific covered action consistent with the adaptive management framework of Chapter 2;
 - φ documentation of how the proposed covered action will achieve its desired result;
 - φ performance measures and targets relevant to meeting the Delta Plan's objectives enumerated in Section 85302(e), Section 85302(d), and Section 85302(e) specific covered action's goals;
 - ~~φ~~ monitoring and analyses requirements sufficient to make adaptive management decisions and to capture any effects that may help or hinder achieving the coequal goals as expressed in the Act or the Delta Plan;
 - φ ~~documentation of delineated authority by the agency responsible for the covered action to support the implementation of the full adaptive management process, including planning, implementation, monitoring, data management, analyses, obtaining the best available science, communicating results, supporting decision making, and full implementation of any changes in implementation of the covered action;~~ and
 - φ procedures ensuring public release of all information developed related to adaptive management, including, but not limited to, primary data, modeling, analyses, and syntheses of research findings.
6. Adaptive management, as applied to covered actions, will not substantially alter the project benefits without financial compensation to the beneficiaries who paid for the covered action.

Consequence of the SWRCB not meeting the Plan's deadlines (revisions to Policy WR P4 starting on page 50 line 11): In the event that the SWRCB fails to meet the Plan's deadlines for setting flow objectives, individual covered actions should be able to proceed in a manner that anticipates the SWRCB's future action and adapts to it. It should not be

possible for the SWRCB's failure to meet the Plan's deadlines to bring work in the Delta to a halt.

WR ~~P4R~~_x The State Water Resources Control Board should develop flow criteria and establish flows as follows:

- φ By June 2, 2014, adopt and implement flow objectives for the Delta that are necessary to achieve the coequal goals.
- φ By June 2, 2018, develop flow criteria and establish flows for high priority tributaries in the Delta watershed that are necessary to achieve the coequal goals.
- φ Prior to the dates indicated in (a) and (b), existing Delta flow objectives shall be used to determine consistency with the Delta Plan. If the State Water Resources Control Board fails to act by the dates indicated, the Council will ~~XXX~~recommend that the Board should reserve jurisdiction to amend (after notice and opportunity for hearing) water right approvals granted prior to adoption of the flow standards to be consistent with such flow standards.

ERP Conservation Strategy is too vague and contradictory to be used as a basis for consistency determinations (revisions to ER P2 and ER P3 starting at page 66 line 42): The Conservation Strategy is a very high level exploration of possibilities. Its recommendations are in some cases contradictory (e.g., you can't grow tulle's for land accretion on islands that have been breached to create deep water habitat) so it is not possible to be consistent with the Strategy per se.

ER P2 Actions that include ecosystem restoration shall ~~be consistent with the following sections~~, where consistent with project goals, incorporate elements from the *Draft Ecosystem Restoration Program's Conservation Strategy for Stage 2 Implementation for the Sacramento-San Joaquin Delta Ecological Management Zone* (California Department of Fish and Game 2010):

- φ map and legend of Figure 4, page 35, "Land Elevations in the Delta Ecological Management Zone will largely determine what habitat types can be accommodated," and accompanying text on pages 33-46; and
- φ map and legend of Figure 5, page 47, "Map of Ecological Management Units within the Delta Ecological Management Zone," and accompanying text on pages 46-49.

The Council may incorporate revised figures from the Ecosystem Restoration Program's Conservation Strategy as it is revised.

ER P3 Actions other than ecosystem restoration shall ~~determine if the action would adversely impact~~ disclose whether the action may positively or negatively affect the opportunity for ecosystem restoration at the elevations shown in Figure 4 and in the Ecological Management Units shown in Figure 5, and as explained in the accompanying text of those figures. These actions shall demonstrate that any ~~such~~

adverse impacts will be fully-avoided or minimized where practicable. Certification of consistency associated with these actions shall consider the habitat values described generally in Section 2 of the *Draft Ecosystem Restoration Program's Conservation Strategy for Stage 2 Implementation for the Sacramento-San Joaquin Delta Ecological Management Zone* (California Department of Fish and Game 2010) and subsequent revisions of this document.

Room for setback levees should not be required in the absence of DWR criteria for setback levees (deletion of RR p5 page 92 line 1). Setback levees are not feasible or useful in all circumstances. It is unreasonable to require a project proponent to set aside land, or spend money on engineering studies, when there is no requirement for setback levees or indication that setback levees are appropriate.

~~RR P5—Until the Department of Water Resources adopts criteria to define locations for future setback levees, any action located next to the land side of a levee shall demonstrate adequate area is provided to accommodate setback levees, as determined by a registered civil engineer or geologist.~~

Flood insurance isn't always available or appropriate (revision to RR R5 starting on page 94 line 28). We think that this provision is inappropriate and should be deleted. If it is retained, we recommend the following revisions.

RR R5 The Legislature should require, where available and affordable, an adequate level of flood insurance for individuals, businesses, and industries in flood prone areas, excluding agriculture, protected habitat and uses that include intentional or non-destructive flooding.

The State should provide incentives for land owners to initiate subsidence reduction programs (an additional recommendation to be inserted after page 95 line 38). The draft Plan should provide incentives as well as prohibitions.

RR R7.5 The Legislature should adopt a program of incentives for Delta landowners to initiate projects that reduce or reverse subsidence.

The amount of carbon emissions from farmed Delta islands is greater than stated in the Plan (revision to page 115 line 2). Work by Jones & Stokes in 2007 and 2008 estimated carbon emissions at up to 17 tons per acre per year. This work is referenced in the Delta Wetlands Project 2010 Draft EIR p. 414.

Conversion of farmed Delta islands with peat soils to natural wetlands or water bodies could provide two types of offsets. The Delta subsides at a rate of 1 to 3 inches a year, mostly in the form of carbon dioxide releases (Ingebritsen et al. 2000). The amount of carbon dioxide emissions from farmed Delta islands is ~~2.5 to 6.5~~ up to 17¹ tons per acre per year.

Protect both the “beneficiaries pay” principle and the concept of adaptive management by providing compensation when covered action intended benefits are substantially reduced by adaptive management actions (new language starting at page 113 after line 13). Adaptive management actions have the potential for reducing project benefits to the intended beneficiaries who paid for them. This would undermine the beneficiaries pay principle and would impair the ability to finance needed projects. To make this work, either adaptive management actions should be limited to actions that will not substantially reduce intended project benefits, or project financing should be provided to compensate for the lost benefits. (See also the proposed new G P1 paragraph 6.)

FP R12 Establish funding to compensate project beneficiaries who paid for covered actions when their benefits are substantially reduced by adaptive management actions.

Thank you again for this opportunity to provide comments and suggestions.

Sincerely,



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¹ Delta Wetlands Project 2010 Draft EIR p. 4.14 based on IFC Jones & Stokes reports from 2007 and 2008.