



## DELTA WETLANDS PROJECT

May 12, 2010

Hon. Phil Isenberg, Chair  
Delta Stewardship Council  
650 Capitol Mall, 5th Floor  
Sacramento, CA 95814

Dear Mr. Isenberg,

Thank you for the opportunity to submit comments on the Interim Delta Plan. Our comments are submitted according to the format suggested in your invitation.

**Who:** These comments are submitted by the Delta Wetlands Project and are directed toward actions being considered by the Delta Stewardship Council.

**What:** The recommendation addresses the issue of how the Council should deal with potentially covered actions located in or affecting the Delta prior to the time that a Delta Plan is formulated and the legislated consistency procedures take effect. More specifically, the recommendation provides guidance for projects that potentially meet the definition of “covered action” but may be implemented prior to the Delta Plan.

**When:** We suggest that special consideration be given to projects that promote Council objectives during the interim period between the Council being formed and its adoption of a Delta Plan.

**Priority:** The recommendation and associated comments constitute a single priority.

**Who pays:** Because we are addressing administrative actions to be taken by the Council, the cost of taking such actions would be minimal and appropriately part of the Council’s operating budget. The Delta Wetlands Project will be subscriber financed.

**How will performance be measured:** If successful, our recommendations would result in Council objectives being met sooner, the Council being able to focus on planning without getting bogged down in “matters of the moment,” and projects that advance Council

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objectives being able to proceed without process delay or administrative burden on the Council.

**Consequences:** If the Council does not establish an effective and efficient process for dealing with potentially covered actions in the Delta, both the Council and the project proponents will be frustrated in their efforts to meet Council objectives.

**Relationship to other projects in the Delta:** The recommended procedure would apply equally to all potentially covered actions in and affecting the Delta that may be implemented prior to the adoption of the Delta Plan. Should the procedure be applied to the Delta Wetlands Project and that project proceed during the interim period, the goals of the Council would be furthered with no compromise to other projects, to the Bay Delta Conservation Plan or anticipated actions of the Council.

### Explanation

One of the realities confronting the Delta Stewardship Council is that you will be making plans for a dynamic, living and changing Delta without the luxury of having everything stand still. The same legislation that established the Council calls for various interim actions and for the development of an emergency response plan. All of these actions are intended to be compatible with a plan that does not yet exist, and are considered compatible with the intent and likely direction of the plan. Recognizing the difficulty of planning in the middle of a changing environment, the legislation called for interim actions and directs the Council to prepare an interim plan that includes recommendations for early actions, projects, and programs until the full plan is developed.

We believe that it is appropriate, and sound public policy, for the Council to embrace and actively encourage projects that further its aims where it is clear that doing so would not compromise other projects, the Delta Plan, or other public policy objectives.

The Delta legislation broadly defines “covered action” as essentially any activity by a public agency that may affect (either positively or negatively) the Co-Equal Goals, subject to a handful of narrow exceptions including actions by regulatory agencies, ongoing maintenance of levees and water infrastructure, and projects with completed California Environmental Impact compliance as of August 2009. The Delta legislation provides for a process requiring determinations of consistency for covered actions once a Delta Plan is adopted. It provides no such procedure for the numerous projects that become ready for implementation during the interim period. Instead, it designated certain actions as “interim actions” that the legislature believed were beneficial, in furtherance of the legislation’s goals, and without harm to other contemplated elements of a Delta Plan. While the list of designated interim actions is reasonable, we do not believe that it is complete, and it certainly does not include projects that may become ready during the interim period. In addition to the Delta Wetlands Project, other projects that are likely to become ready during the interim period include: the Emergency Response Plan, Corps of Engineers’ CalFed Levee Stability

Program, DWR's Delta Levees Special Flood Control Projects, DWR's special projects to enhance habitat, the North Delta Flood Control and Ecosystem Restoration Project and others. The interim plan should address the need to deal with these projects during the interim period.

Our suggestion is that the Council establish a procedure, within its interim plan, for adding projects to the list of interim actions. This procedure could be applied immediately to projects that are ready but for some reason were not included in the legislation. The same procedure could be used as needed during the interim period to include projects that become ready and can advance the Council's objectives without waiting for adoption of the Plan or consuming significant Council resources.

Projects being considered for addition to the list of interim actions should meet many, if not all of, the following criteria designed to assure their consistency with Council objectives:

- Projects should have a final California Environmental Quality Act document.
- Projects should not hinder, and should preferably contribute to meeting the Co-Equal Goals and other goals of the Delta legislation.
- Projects should be consistent with, or not compromise or interfere with, programs and actions being considered by the Bay Delta Conservation Plan (BDCP).
- Projects should, preferably, advance other public policy goals such as reduction of greenhouse gasses.
- Projects that are subject to subsequent, substantive environmental and regulatory review and approval where such environmental review and approval process will consider the Council's interim plan and other guidance.
- Projects should be user or beneficiary financed.

To implement this suggestion we suggest a procedure similar to that provided by law for making consistency determinations. We suggest that the Council be able to add to the list of interim actions on their own motion. We further suggest that project proponents be able to propose that their project be added to the list of interim actions by submission of a self-certification of consistency with the above criteria, subject to Council review and approval.

While the above suggestion responds to a general need, we have a specific interest.

The Delta Wetlands project is well known and well developed. Based on abundant information already in the public record, the project meets all reasonable criteria for a project that should be allowed to proceed during the interim period. We believe that the Delta Wetlands Project should be added to the list of interim actions for the following reasons:

- The project issued a Draft EIR on May 7, 2010, incorporating place of use analysis and updates to reflect changed conditions since the last EIR. A final EIR should be

- issued by the end of this calendar year making the project ready to proceed in advance of the finalization of a Delta Plan.
- The project will be subject to review and permit approval by the State Water Resources Control Board, the California Department of Fish and Game, and other state and federal agencies.
  - The project contributes to meeting the co-equal goals of providing a “more reliable water supply for California” and “protecting, restoring and enhancing the Delta ecosystem.”
    - Regarding a more reliable water supply for California the project:
      - § Creates 215,000 acre feet of new water storage,
      - § Will be operated in conjunction with the Semitropic Water Storage District,
      - § Produces 158,000 acre feet of new water supply, and
      - § Strengthens levees along critical Old and Middle River water conveyance corridor.
    - Regarding protecting, restoring and enhancing the Delta ecosystem, the project:
      - § Dedicates two islands for habitat, creating 9,000 acres of managed open space on the Pacific Flyway, and
      - § Incorporates ecologically sound water diversions:
        - Utilizes state of the art fish screens,
        - Diverts only during high flows, and
        - Captures only a small fraction of outflow available after all environmental requirements and senior water rights have been met.
  - The project contributes to meeting other public policy goals including the strengthening levees, reducing subsidence on Delta islands, and reducing the emission of greenhouse gases.
  - The project islands are not targeted for action by the Bay Delta Conservation Plan or the Blue Ribbon Task Force’s Strategic Plan. Nor does development of the project violate any of the proscriptions considered for the Delta such as residential development.
  - The project is consistent with identified elements of the Bay Delta Conservation Plan. It:
    - Substantially improves through-Delta conveyance and new isolated conveyance,
    - Stabilizes 56 miles of Delta levees making them more seismically resilient,
    - Provides water and facilities useful in flood and seismic emergency response,
    - Reduces agricultural discharges,
    - Produces terrestrial habit including uplands and wetlands consistent with BDCP habitat goals,
    - Is consistent with 2 Gates, isolated and dual conveyance, and Eco Crescent proposals, and

- Facilitates water transfers and ground water banking.
- The project will not conflict with new biological flow criteria or biological objectives called for by the Delta legislation because the project approvals from state and federal regulatory agencies will be conditioned to be consistent with such criteria and objectives.
- The project will be implemented by the Semitropic Water Storage District and will be user financed. It will not compete for money or Resource Agency time with other Delta projects.

We appreciate this opportunity to comment on the Council's interim plan and welcome any questions that you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Anson B. Moran". The signature is written in a cursive style with a large initial "A" and "B".

Anson B. Moran  
General Manger