



- Board of Directors
Special Committee on Bay-Delta

2/14/2012 Board Meeting

9-1

Subject

Review of Delta Stewardship Council's Delta Plan and Draft Environmental Impact Report

Description

Background

In 2009, the state Legislature enacted SBX7 1, the Delta Reform Act, and other related bills to comprehensively address the ongoing water system/ecosystem crisis in the Sacramento-San Joaquin Delta. The Act declared that the policy of the state of California is to meet the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem.

As part of the Delta Reform Act, the Legislature created, among other entities, the Delta Stewardship Council (Council), an independent agency consisting of seven members, to develop a legally enforceable management plan for the Delta (Delta Plan) to meet the coequal goals. The Legislature also assigned the Council other tasks:

- Develop performance measures for the assessment and tracking of progress and changes to the health of the Delta ecosystem, fisheries, and water supply reliability;
- Determine, on appeal, if a state or local agency project in the Delta (covered action) is consistent with the Delta Plan;
- Determine, on appeal, whether the Bay Delta Conservation Plan (BDCP) meets statutory criteria in the Delta Reform Act for inclusion in the Delta Plan; and
- Oversee a committee of agencies responsible for implementing the Delta Plan that will coordinate agency actions with the Council.

In 2010 and 2011, the Council directed its staff to begin drafting the Delta Plan, held monthly meetings on Delta-related topics, adopted administrative procedures for the covered action process, released five staff-written draft plans for public comment, and released a staff draft Environmental Impact Report (EIR) on November 4, 2011. Metropolitan, on its own and through the State and Federal Contractors Water Agency, the State Water Contractors or Association of California Water Agencies' Ag Urban Coalition, filed public comments on all draft products and notices. The Council is accepting public comments on the draft EIR through February 2, 2012. From that point it will review comments and release a sixth draft plan sometime in February or March, and accept comment on that draft. Sometime in the spring, the Council is expected to release a seventh and final draft plan along with a final EIR for the Council's approval and certification.

Delta Plan

The fifth draft Delta Plan is the basis for the preferred alternative analyzed in the draft EIR. The final Delta Plan will be used to guide state and local actions in the Delta in a manner that furthers the coequal goals. The fifth draft Delta Plan contains 12 “regulatory policies” and 61 recommendations. The policies address a range of issues, including attempting to set deadlines for State Water Resources Control Board flow proceedings, detailing how the covered actions consistency process will work with local water planning decisions, and protecting floodways from encroachment.

Metropolitan staff has a number of legal and policy concerns with the fifth draft Delta Plan. The main issue is whether the current draft will meet the coequal goals of providing a reliable water supply for California while maintaining a healthy ecosystem in the Delta. Of particular concern is how the BDCP is treated within the draft Delta Plan. The Delta Reform Act mandates that the Council adopt the BDCP into the Delta Plan if the California Department of Fish and Game (DFG) determines certain statutory requirements have been satisfied, such as meeting the criteria of a Natural Community Conservation Plan. DFG’s determinations may be appealed to the Council, but staff is concerned about the procedures the Council is proposing to review the BDCP and the extent to which the Council may attempt to reopen decisions or control BDCP implementation. In addition, the Council claims to have authority to review local water management decisions, such as pricing structure and water portfolio decisions, when it is asked to determine if certain covered actions, such as water transfers through the Delta, are consistent with the Delta Plan. Staff also has commented that all drafts of the Delta Plan and the draft EIR appear to require reductions in the current level of water diversions from the Delta. Finally, the fifth draft Delta Plan lacks a strategic levee investment strategy. Staff has made or contributed to comprehensive comments and line-by-line suggestions for language changes to the various drafts that can be found on the Delta Stewardship Council website.

Draft Delta Plan Program EIR

The draft EIR reviews the fifth draft Delta Plan and five alternatives, but does not analyze how these alternatives would or would not meet the coequal goals of water supply reliability and ecosystem restoration. The Council describes the alternatives as (1) a no project alternative; (2) two alternatives with increased emphasis on water supply reliability; (3) one alternative with increased emphasis on Delta ecosystem restoration; and (4) one alternative with increased emphasis on protection and enhancement of Delta communities and culture. The document is over 2,000 pages long and is comprised of 26 chapters and 9 appendixes. It covers topics such as water, biological and agricultural resources, flood risk, geology, recreation, and many other areas of interest.

Metropolitan staff is working with other state and federal contractors to review the draft EIR and submit comments by February 2, 2012. Comments will address legal, policy, and technical issues. Key questions to address in the review include:

- Is the draft EIR adequate under CEQA?
- How does the draft EIR address the BDCP?
- Does the draft EIR provide a fair analysis of the environmental impact of each alternative?
- Does the Council have the legal authority to adopt and implement some of the regulatory policies contained in the draft EIR?

Metropolitan staff has identified preliminary problems with the draft EIR, but will explore these further as they gain a better understanding of the complete document. One primary concern is that while the purpose of the Delta Plan and the EIR alternatives is to chart a path toward meeting the coequal goals, the Council has chosen not to analyze whether the draft Delta Plan or the alternatives do, in fact, meet such goals. Because of this, it is difficult to understand how the document can determine whether the draft Delta Plan or any of the draft EIR alternatives can meet their objectives. Additionally, the draft EIR states that the “no project” alternative, which is meant to analyze what will happen if no plan moves forward—in other words, the status quo—will result in greater water deliveries to export areas than will result from some of the Delta Plan alternatives the EIR is analyzing. It is troubling that the Council is analyzing Delta Plan alternatives that would reduce deliveries to

export areas compared to the status quo, particularly given proposed BDCP investments and that such an approach will not meet the statutory goal of a more reliable water supply for the state.

Metropolitan looks forward to being a supporter of the final Delta Plan and EIR. While progress has been made through the drafting process, Metropolitan will continue to be a constructive participant in the weeks ahead and will encourage further refinements to the draft Delta Plan and EIR so that the final Delta Plan advances the coequal goals and does not inadvertently threaten their achievement.

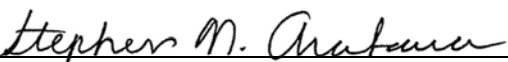
Policy

By Minute Item 47135, dated June 12, 2007, the Board adopted the proposed framework for Metropolitan's Delta Action Plan.

By Minute Item 47605, dated August 19, 2008, the Board approved the Delta Governance Principles.

Fiscal Impact


None



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Manager, Bay-Delta Initiatives

1/18/2012

Date



Jeffrey Kightlinger
General Manager

1/19/2012

Date