



**FINAL Summary Minutes of the
Delta Protection Commission Meeting
Thursday, January 15, 2015**

University Waterfront Plaza Hotel
110 West Fremont Street, Stockton, CA 95202

ADMINISTRATIVE AGENDA

1. Call to Order & Flag Salute

Chair Piepho called the meeting to order at 5:34 p.m. and initiated the flag salute.

2. Welcome & Roll Call

Present: Chair Piepho, Vice Chair Thomson, Commissioners Elliott, Ferguson, Richardson, van Loben Sels, White (alternate for Kelly), Ferrara (alternate for Laird), Eddy (alternate for Ross), Nomellini (alternate for Scriven), and Ex-Officio Member Frazier. Commissioner Bugsch arrived at 5:45 p.m. and Commissioner Nottoli arrived at 6:12 p.m.

Absent Commissioners with no alternate present: Commissioners Cabaldon and Villegas. The Commissioner seat representing cities in San Joaquin County is currently vacant.

A quorum was established.

Chair Piepho welcomed new Commission member and San Joaquin County Supervisor Bob Elliott, and made a presentation of a commemorative Delta sculpture to outgoing Commission Chair Ruhstaller. Mr. Ruhstaller addressed the Commission.

3. Public Comment – an opportunity for the public to address the Commission regarding items not on the agenda

Chair Piepho asked for public comment and there was none.

CONSENT AGENDA

4. November 20, 2014 Meeting Minutes

Chair Piepho asked for a motion to approve the November 2014 meeting minutes.

It was moved by Commissioner Richardson and seconded by Commissioner Ferrara to approve the minutes; in a voice vote, the motion carried unanimously (with Commissioner Elliott abstaining).

REGULAR AGENDA

5. Executive Director Report

Executive Director Vink presented his report to the Commission: new edition of Delta Voice; legislative activity at the end of the Congressional session on Delta National Heritage Area legislation but no final action; land use review comments by Commission staff; Bay Delta Conservation Plan (BDCP) briefing held in early December to describe revised tunnel plan; opinion piece on revised tunnel plan that ran in the *Sacramento Bee*; welcome to new Commission member Elliott and a still-to-be-named Commission member representing cities in San Joaquin County; Commission staffing update; recent strategic planning activities, including Commission subcommittee meetings on November 18 and January 8; Governor's proposed FY 2015-16 budget for the Commission, which proposed relatively stable funding of \$1.28 million but reductions in Environmental License Plate Fund support of \$22,000 in the current fiscal year and \$80,000 in FY 2015-16; and update on staff efforts to revise the FPPC Conflict of Interest Code.

Chair Piepho asked for any public comment and there was none.

6. Delta Protection Advisory Committee (DPAC) Report and Appointment

DPAC Chair Mark Pruner reported the Committee met on two occasions to provide comments on the strategic plan working draft. Chair Piepho thanked DPAC for the great work being done.

Mr. Vink reported on a DPAC vacancy for Delta Utilities and Infrastructure representation and that Mark Krausse, Senior Director at PG&E, has submitted his application for consideration. Mr. Vink recommended the Commission approve the appointment of Mr. Krausse to the DPAC for a three year term.

Chair Piepho asked if there were other nominations from the floor and there were none.

It was moved by Commissioner Thomson and seconded by Commissioner Elliott to appoint Mark Krausse to the DPAC for a three year term; in a voice vote, the motion carried unanimously.

Agenda Item 7 was delayed until Commissioner Nottoli arrived.

8. DPC 2014 Annual Report

Mr. Vink explained the statutory requirement to report annually to the Governor and Legislature, and indicated that the report is generally due early in the calendar year. He asked for Commission input on any changes to the draft report and sent a formatted version of the 2014 Annual Report around the Commissioner's table. He explained that Commission staff would incorporate any Commissioner comments into the formatted report and work with Chair Piepho to incorporate a cover letter from the Chair. The report will then be distributed in printed form to the Governor, Legislature and Commission members and will also be posted on the Commission website.

Commissioner Ferguson commented that the annual report land use information used to track acreage of agriculture land lost to development and habitat restoration and requested that information be included in the annual report.

Mr. Vink responded that the annual report could cite Farmland Mapping and Monitoring Program conversion data for farmland conversion but that the information is usually one to two years old; habitat conversion acreage is still not readily available. Following Commission discussion, it was agreed to incorporate the most recent Farmland Mapping and Monitoring Program information and to investigate data sources for future annual reports. Chair Piepho agreed to work with staff to finalize the letter and review the revised land use information.

Chair Piepho asked for public comment and there was none.

It was moved by Commissioner Ferguson and seconded by Commissioner Richardson to approve the 2014 Annual Report with proposed additions; in a voice vote, the motion carried unanimously.

9. Delta Levee Maintenance Subventions Program and Special Flood Protection Projects Program report

Mr. Vink introduced David Mraz, manager of the Delta Levees Environmental Engineering program.

He presented information about the history of the Department's Delta levee funding programs, described recent levee improvement efforts, and provided information on DWR's efforts to expend bond funds for Delta levee improvements, including Proposition 1 funds.

Commissioner Elliott asked about the Department's proposed drought barriers; Mr. Mraz responded that the Delta is the hub for State and Federal water supply system and that drought barriers could be necessary in continued drought conditions to ensure that salinity does not intrude and harm Delta water quality.

Commissioner Richardson asked about the water quality downriver of the proposed drought barriers; Mr. Mraz indicated that there is a chance for brackish water in parts of the Delta as a result of the drought barrier installation, but that the salinity effects would be more pronounced without the drought barriers.

Commissioner Ferguson asked about work in the south Delta on the Grant Line Canal. Mr. Mraz said this is a U.S. Army Corps of Engineers "project" levee and not under DWR jurisdiction, but would qualify for subvention program support.

Commissioner Nomellini said great work has been done by DWR on Delta levees throughout the years, but that costs have increased and local Districts have more difficulty participating. He further stated the importance of focusing on engineering

standards rather than Hazard Mitigation Plan standards, and the impacts of using these same standards today; Mr. Mraz conceded that there is not enough State funding for all levee improvements.

Chair Piepho asked if there was anything the Commission could do to support these efforts. Mr. Mraz responded that the contract for the Commission's Delta Flood Risk Management Assessment District Feasibility Study is a good start. Other efforts include the Stewardship Council's Delta Levee Investment Strategy which works to reinforce the co-equal goals. Commissioner Nomellini said the prioritization should focus on levee stability.

Chair Piepho asked for public comment.

Barbara Daly, Clarksburg resident and DPAC member, asked how much had been done to improve levees where the BDCP intakes are planned, and how many levee failures in the past 100 years have involved more than one island at a time; Mr. Mraz responded that levee failures occur not only with high water, but with seepage (such as the Jones Tract failure in 2006). Large failure events risk having the water supply shut down.

Mark Wilson, Clarksburg resident, asked about the drought barriers in the north Delta and whether any consideration being given to other locations; Mr. Mraz said he is only peripherally involved and could not speak to the question.

Greg Zlotnick, San Luis and Delta Mendota Water Authority, recommended a presentation from Central Valley Flood Protection Board and that Commission staff review their monthly reports to the US Army Corps of Engineers.

Mr. Vink reminded Commissioners that the DWR Drought Contingency Plan was scheduled to be released today. Commissioner Ferrara confirmed the report had been released and that the plan should look similar to last year's plan.

7. Delta Flood Risk Management Assessment District Feasibility Study contracting

Mr. Vink stated that the idea for the study originated with the Commission's Economic Sustainability Plan and was subsequently included in the Delta Plan and the Governor's Water Action Plan. A \$250,000 Interagency Agreement (IA) was executed with DWR in 2013 to complete the project.

The Commission released a Request for Proposals in September 2014; no proposals were received, in part due to a tight timeframe for submittal of proposals and a \$250,000 cap on funding for the work. The Commission released a revised Request for Proposals (no budget cap and allowing more time for proposal submittals) in October 2014 and received four proposals in response. A four person evaluation team (staff representatives from the Commission, Stewardship Council and DWR) convened and heard presentations from the top three proposers – teams led by Downey Brand/ENGEO, Harris and Associates and M. Cubed.

Following evaluation of the proposals, M. Cubed was selected as the consultant with a bid of \$476,197. A Notice of Intent to Award was published in early January 2015.

The Commission was asked to approve two items:

1. Approval to amend the interagency agreement with DWR to increase funding from \$250,000 to approximately \$500,000, and extend the term from March 31, 2016 to June 30, 2016.
2. Approval to execute the contract with M. Cubed.

Mr. Vink said he is aware of the concerns over the award to M. Cubed and the work the firm has done on the BDCP. He asked Richard McCann of M. Cubed to attend the meeting and answer any questions Commissioners may have.

Chair Piepho asked if there were any questions from the Commissioners.

Commissioner Ferrara asked how the proposals were ranked; Mr. Vink explained the proposal point system (separate scores for the written proposal, qualifications and presentation, followed by scoring for the budget once the sealed bids were opened). Mr. Vink provided the final score sheet to the Commissioners for review.

Chair Piepho asked about the wide discrepancy in the cost proposals (from \$476,000 to more than \$1.3 million); Mr. Vink said that the request for proposals was not an exact engineering proposal and included a fair amount of subjectivity in how the consultant teams interpret the proposal. He stated that if he were to do this over again, he would consider a maximum budget amount as part of the request for proposals.

Commissioner Nottoli asked if the DWR IA amendment required Commission approval, and Mr. Vink stated that it did. Commissioner Nottoli also asked about the time sensitivity and what statutes or other mandates the Commission is under for this process; Mr. Vink said there are no statutory requirements, but the urgency to proceed with this effort is linked to the Delta Levee Investment Strategy being undertaken by the Delta Stewardship Council.

Commissioner Thomson said he hoped the Commission did not take a position tonight. He stated that M. Cubed wasn't the top-ranked proposal until the cost estimate was factored in. He had concerns about the award to M. Cubed due to their work on the BDCP. He recommended not awarding the contract at this meeting and setting up a sub-committee to look at the proposal and have that group report back to the Commission.

Chair Piepho asked for direction from the Commission. Mr. Vink confirmed there is not a deadline for the award of the contract. If the Commission decided to approve the contract with M. Cubed at a later date, then all that would be lost is time. If the Commission did not approve the award of the contract to M. Cubed or recommended

the award to a different entity, then the award would have to be cancelled and the process would start over again.

Commissioner Eddy asked if the amendment for the IA with DWR is in place; Mr. Vink replied it is not, and that he's requesting authority tonight (or at a future Commission meeting) for the Executive Director to approve the amendment. Because of the amount of the proposed contract with the consultant, it requires Department of General Services approval.

Commissioner Elliott was also concerned about the proposed award, as the proposal ranked highest before cost was taken into consideration actually ranked lowest after the costs were factored in (and vice versa).

Commissioner Ferguson asked about the cost detail on the proposals and the reason for the high cost of the Downey Brand/ENGEO proposal; Mr. Vink said that he did not ask Downey Brand/ENGEO why their bid was so high.

Commissioner Nomellini said it was important to have confidence in the result of this work. There is concern about the conflicts with the work done on the BDCP, particularly regarding the economic analysis M. Cubed did on the cost of levee maintenance and improvements.

Commissioner Bugsch said that the Commission may want to re-visit the term on the DWR amendment.

Chair Piepho invited the representative from M. Cubed to speak to the Commission.

Richard McCann of M. Cubed spoke about the issues of conflict of interest previously mentioned. This is a stakeholder focused process, as laid out in their proposal. This will be a very iterative process, in which the Commission and other stakeholders will be involved at each stage. A broad range of interests is represented on their team. He also mentioned they noted the initial \$250,000 cap and worked on their budget proposal accordingly to be as economical as possible.

Commissioner Thomson asked why the core proposal cost was \$308,000 with added optional tasks bringing the total to \$476,000, instead of one combined budget proposal; Mr. McCann said this had to do with the original \$250,000 budget limit and that they wanted to provide a minimal budget to achieve the objectives of the proposal. The added tasks improve the quality of work.

Commissioner Bugsch commented that the range of bids made comparison difficult.

Commissioner Ferrara said it is DWR money and we need to be sensitive to the original cost projection. He wondered who might bid on the proposal if there is a subsequent call for proposals. Commissioner Thomson said the monies are ultimately taxpayer

dollars and we need to do a good job vetting any contractors we're going to hire and ensure the money is appropriately spent.

Commissioner Nottoli said there's no harm in additional review. Additional review would not negate the process and the Commission needs confidence about the selection.

Chair Piepho asked for public comment, and there was none. She then asked for direction from the Commission.

Commissioner Thomson said a couple of actions were needed. Mr. Vink said the authority for the time extension could be deferred and DGS approval of the contract should not be a problem.

Chair Piepho asked about the increase in the amount of the Interagency Agreement from \$250,000. Mr. Vink deferred to Assistant Executive Director Caldwell for further response and direction. Ms. Caldwell said that DWR has exemption from Department of General Services for approval of all Interagency Agreements up to \$1 million. She recommended delay on that action until the contract is awarded. Commissioner Eddy asked what the options were and what impacts this would have on the request for proposals process.

Mr. Vink said that if a subcommittee is formed and decides to award the contract to M. Cubed, then the Commission can approve the contract and the work can proceed. If the sub-committee recommends not awarding the contract to M. Cubed and the Commission concurs, then the contract award will be voided and the Commission would start the entire process again.

Ms. Caldwell mentioned another option would be to delegate authority to the subcommittee to make decisions on behalf of the Commission.

Commissioner Thomson said he was hearing consensus not to award the contract tonight, and to convene a subcommittee with the authority to approve the contract, if M. Cubed is the selected contractor.

Commissioner Nomellini moved that the Chair appoint a subcommittee to determine whether to award the contract to M. Cubed or go back out for subsequent proposals. Commissioner Nottoli raised concerns about the ability of the subcommittee to award the contract and suggested they make recommendations to the full Commission. Commissioner Nomellini withdrew his motion.

Commissioner Thompson said the appointment of the sub-committee should be at the discretion of the Chair. Chair Piepho asked for volunteers, and Commissioners Bugsch, Richardson, and Thomson volunteered to serve.

It was moved by Commissioner Thomson and seconded by Commissioner Nottoli to appoint a subcommittee of Commissioners Thomson, Bugsch and Richardson to meet

and provide a recommendation to the Commission on the award of the contract; in a voice vote, the motion carried 11-1 with Commissioner Ferrara voting no.

10. Commissioner comments/announcements

There were no Commissioner comments.

Chair Piepho asked the room to be cleared for the closed session.

11. Closed Session – Executive Director Performance Evaluation

There was no action to report from the closed session.

12. Adjourn

Chair Piepho adjourned the meeting at 8:14 p.m.