

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

50 California Street • Suite 2600 • San Francisco, California 94111 • (415) 352-3600 • Fax: (415) 352-3606 • www.bcdc.ca.gov

March 8, 2013

**TO:** All Commissioners and Alternates

**FROM:** Lawrence J. Goldzband, Executive Director (415/352-3653 lgoldzband@bcdc.ca.gov)  
Sharon Louie, Director, Administrative & Technology Services (415/352-3638 slouie@bcdc.ca.gov)

**SUBJECT: Draft Minutes of February 7, 2013 Commission Meeting**

1. **Call to Order.** The meeting was called to order by Chair Wasserman at the Ferry Building, Port of San Francisco Board Room, Second Floor, San Francisco, California at 1:04 p.m.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted, Commissioners Addiego, Apodaca, Bates, Chan (represented by Alternate Gilmore), Chiu, Gibbs, Gioia, Hicks (represented by Monarres), McGrath, Moy, Nelson, Pemberton, Pine, Sartipi (represented by Alternate McElhinney), Sears, Spering (represented by Alternate Vasquez), Techel, Wagenknecht and Ziegler (represented by Alternate Brush). Assembly representative Feldstein was also present.

Chair Wasserman announced that a quorum was present.

Not present were: Santa Clara County (Cortese), Department of Finance (Finn), Sonoma County (Gorin), Governor's Appointee's (Jordan Hallinan and Randolph), and California Natural Resources Agency (Vierra).

3. **Public Comment Period.** Chair Wasserman called for public comment on subjects that were not on the agenda. Comments would be restricted to three minutes per speaker on topics not on the agenda.

Ms. Maureen Gaffney spoke first: I am with the Association of Bay Area Governments, San Francisco Bay Trail Project. I wish to address you regarding the continued lack of progress surrounding the California Department of Fish and Wildlife's public access requirement at Ponds 9 and 10 at the Napa Plant Site.

As a result of your enforcement staff's effort, a letter dated January 29<sup>th</sup> requested a schedule for completion of several tasks necessary for the Department to meet its new requested deadline of December 31, 2013.

It is my understanding that the requested schedule has not been submitted to BCDC. For two and a half years this has been the Department's modus operandi.

Since early 2010 we have been discussing the appropriate CEQA path and how to move the project forward.



*Making San Francisco Bay Better*

**BCDC MINUTES  
February 7, 2013**

The Department is stating that the stakeholders need to meet in order to determine the course of action and develop a schedule. All parties and I had a conference call on September 2, 2010 for this purpose.

All parties met for this purpose in person on May 25, 2011. As nothing had happened, the Coastal Conservancy's Bay Program manager and the Department met on a conference call for this purpose on October 17, 2011.

This is in addition to numerous email exchanges vacillating between, we don't know, CEQA addendum with consultant, CEQA addendum in-house, supplemental EIR, subsequent EIR, and now back to, we don't know.

Here we are with the fourth proposed meeting in two and a half years to, yet again, determine the CEQA path, schedule and how to move the project forward.

The Department has already failed the very first condition of your pending extension by not providing the requested information by February 5<sup>th</sup>.

Please insist on compliance. Thank you very much.

Mr. John Coleman addressed the Commission: I am with the Bay Planning Coalition. I'd like to applaud the Commission and staff on your public outreach on your strategic planning.

May 3<sup>rd</sup> will be our 26<sup>th</sup> annual decision makers conference and we will be focusing on trade, economic growth and jobs and what this means to the northern California economy.

We will have an economic report on trade and its impact on our economy. We are ranked 17<sup>th</sup> in GDP in the world.

To protect the environment and do wetlands restoration we need to have the revenue that is produced by a healthy economy.

Seeing no more public speakers, Chair Wasserman moved on to approval of minutes.

4. **Approval of Minutes of the January 17, 2013 Meeting.** Chair Wasserman entertained a motion and a second to adopt the minutes of January 17, 2013.

**MOTION:** Commissioner Wagenknecht moved, seconded by Commissioner Nelson, to approve the January 17, 2013 Minutes. The motion carried by voice vote.

5. **Report of the Chair.** Chair Wasserman reported on the following:

a. **Strategic Plan Workshop.** We are making good progress on public workshops. In April we will bring our revised strategic plan back to the Commission for your comments (our 18<sup>th</sup> draft of the plan).

b. **Building Move.** We do not have news on our building move. DGS is talking to our landlord, so we do not expect to be put out on the street on March 30<sup>th</sup>. I would like to note that the issue of rising sea level is appropriately in front of us all the time now. It's probably appropriate to set up a committee to focus on rising sea level.

c. **Ex-Parte Communications.** That completes my report. In case you have inadvertently forgotten to provide our staff with a report on any written or oral ex-parte communications, I invite Commissioners who have engaged in any such communications to report on them at this point.

Commissioner Chiu reported: I have spoken to interested parties on the Warriors situation.

Commissioner Pemberton reported: I have also spoken to interested parties on the Warriors situation.

Commissioner Gioia added: I have had a discussion with Trails Action Committee and the applicant, IMTT, with regards to public access issues with a potential permit at the Port of Richmond.

Vice Chair Halsted stated: People have tried to talk to me about the Warriors but I have not talked about them.

**6. Report of the Executive Director.** Executive Director Goldzband reported: A couple weeks ago the unimaginable happened. I discovered between the Rockridge and MacArthur BART stations that I had left my cell phone at home. I had a meeting to which I could not be late, so I spent the day without remote access. Nothing urgent happened that required me to have my cell phone. It made me realize how much I longed for the days in which cell phones were the province of the rich and famous. Most important, it reminded me of how important it is that Chair Wasserman and I be able to contact Commissioners to provide information and consult on potential emergency actions and permits, especially in the aftermath of, for example, a major earthquake. Therefore, staff soon will reach out to you to obtain emergency contact information. It is not mandatory that you provide it. It will not be available to general staff and we shall use it only in emergencies.

No news continues to be good news on the budget.

As you may recall, in 2012 we were fortunate to be selected to host a NOAA Sea Grant Fellow in the Sediment Management Team. We were so pleased with our fellow, Jenny Jacox, that we hired her as a full time staffer midway through her fellowship. This past year, we were once again selected as a host agency. Anniken Lydon, who received her undergraduate and graduate degrees in Marine Biology from Cal Poly San Luis Obispo (SLO), has joined the Sediment Management Team. Anniken's Master's thesis research focused on the use of DNA barcoding techniques to identify morphologically similar species of kelp found in Arctic waters. At Cal Poly, Anniken taught undergraduate courses and worked with public outreach and marine education. We will have Anniken's services for one year. (Ms. Lydon was present and was recognized).

Earlier this month, on World Wetlands Day, the San Francisco Bay Estuary was added to a list of protected wetlands under a 1971 international treaty known as the Ramsar Convention. For reasons that clear-thinking people do not understand, our Bay is the 35th "wetland of importance" so listed in the United States, despite its rank as the largest estuary on the west coast and the fact that it contains over three quarters of our State's remaining wetlands. In any case, several notable organizations are working together to field a star-studded announcement later this year.

On a more prosaic note – and that's being kind given that I am about to talk about Sacramento and legislation. We and many other state and regional agencies have been contacted by Legislative staffers asking for our input on potential legislation involving climate change. I immediately contacted my counterparts at the Coastal Commission and the Coastal Conservancy and we agreed that our involvement in any legislation should be a coordinated effort, and also involve the affected local governments, the JPC, the Brown Administration and other stakeholders. We understand that State Senators Loni Hancock and Ted Lieu are considering introducing spot bills to address coastal resilience to sea level rise and climate change. We shall work with this large group of interested parties to determine whether appropriate legislation should and can be developed to promote adaptation and resilience to sea level rise.

On the good news front, the Richardson's Bay Regional Agency, known as the RBRA, is a joint powers authority comprised of the cities of Sausalito, Mill Valley, Tiburon and Belvedere. Each fronts Richardson's Bay in Marin County. It was formed in 1985 to implement provisions of

the Special Area Plan. One of the RBRA's biggest jobs is managing the large number of abandoned vessels in the Bay. This is a very expensive undertaking because this is where boats without owners go to die. Last September, the RBRA submitted a grant application to CalRecycle for a half-million dollars to support its abandoned vessel removal program. CalRecycle awarded a three-year grant in December and the RBRA is proceeding to remove abandoned vessels using these funds. The participation of Adrienne Klein, our Chief of Enforcement, was critical in making this grant application possible. Adrienne will be coordinating and presenting a briefing on Richardson Bay and vessel removal in the near future. We have worked with the city of Benicia in the past few months on this same issue. Tomorrow, BCDC will mail to all Commissioners and alternates, a hard copy of Form 700 by the FPPC along with instructions and FAQs. We are required to receive these back from you by April 2<sup>nd</sup>. We shall follow up tomorrow that hard copy mailing to you with an email to all Commissioners and alternates which includes an electronic version of Form 700. This completes my report.

Chair Wasserman opened up the floor for any questions.

Commissioner McGrath commented: Is this limited to just Richardson's Bay? This is a problem in many jurisdictions. Is this scalable or is new legislation needed? Can you comment on what we do for other areas?

Commissioner Sears responded: I'm Chair of RBRA. I can tell you that the money we're using for vessel destruction is essentially right in Richardson's Bay itself.

Executive Director Goldzband added: We have been very fortunate that CalRecycle has an individual there who is very interested in cleaning up the Bay with regard to abandoned vessels.

The CalRecycle grant has gone to RBRA specifically for RBRA. Is it scalable? Well, it takes a lot of money and it takes grant applications.

During the briefing on Richardson's Bay you'll hear a discussion on how we would hope to do it in other places but it's a long-term effort.

Commissioner Sears added: And the money is benefitting other places because people tend to bring their boats and deposit them in Richardson's Bay.

Executive Director Goldzband stated: It is a graveyard of abandoned vessels.

Commissioner McGrath further inquired: If other institutions with responsibilities for waterways develop a grant capacity that may be the best way for us to scale this?

Executive Director Goldzband answered: I think that's a reasonable thing to ask about.

7. **Consideration of Administrative Matters.** Executive Director Goldzband stated: On February 1<sup>st</sup> the Commissioners were sent you a listing of the administrative matters staff was prepared to act upon. Bob Batha is available to respond to any questions Commissioners may have about the matters on the listings.

Chair Wasserman moved on to Item 8.

8. **Vote on the California Department of Fish and Wildlife, Material Amendment No. Three to BCDC Permit No. 2004.08, for Phase III of the Napa-Sonoma Marshes Restoration Project (Enhancing Management Capabilities at Ponds 6, 6A, 7, 7A and 8), in the Napa River and Huichica Units of the Napa Sonoma Marshes Wildlife Area (NSMWA), Napa County.** Chair Wasserman announced that Item #8 was a staff recommendation and vote on a California Department of Fish and Wildlife Service project for Phase Three of the, Napa-Sonoma Marshes Restoration project. This is a vote on the material amendment to the permit held by the California Department of Fish and Wildlife, the entity formerly known as the Department of Fish and Game.

We held a public hearing on this item at our January 17<sup>th</sup> meeting. Michelle Burt Levenson will make the staff recommendation.

Ms. Levenson presented the following: The staff recommends that the Commission approve Material Amendment No. Three to BCDC permit No. 2004.008 and concur with consistency determination Number C2011.002 to construct the third and final phase of the Napa-Sonoma Marshes Restoration Project, a joint project of the California Department of Fish and Wildlife and the Army Corps. of Engineers, proposed just west of the Napa River, in Napa County.

The project will result in upgrades to five former salt ponds that will allow for enhanced management of the ponds for wildlife.

In addition, upgrades to Pond 7 will allow for the safe and slow dilution and eventual release of bittern from Pond 7 into the Napa River.

While the Napa-Sonoma Marshes Wildlife area is open to the public, much of the area is inaccessible by the majority of public access users.

This project will upgrade portions of the existing access in two areas. First, the project will result in the widening, leveling and resurfacing of an existing maintenance road at Ponds 7 and 7A that is currently used for public access.

With improvements, this 1.07-mile pathway will be wheelchair accessible and will provide seating and interpretive signage.

Second, the project will place fill to create a higher embankment around two sides of Pond 8 and will create an ADA accessible path on top of the embankment.

Currently there is an informal pathway at Pond 8 that is inaccessible in several areas. With project improvements, this 1.16-mile pathway will be accessible to the majority of users and will contain seating and interpretive signage.

The staff recommendation analyzes whether maximum feasible public access, consistent with the project, will be provided with this project.

Based on an analysis of the site opportunities and constraints, project costs and objectives, a comparison of other similar restoration projects, wildlife compatibility and considering the public access provided with all three phases of the Napa-Sonoma Marshes Restoration Project which totals over ten miles of improved public access trails and a variety of amenities, the staff believes that this project provides maximum, feasible public access to the Bay consistent with the restoration project.

At the Commission hearing regarding this project, several Commissioners raised concerns regarding Fish and Wildlife's compliance with permit conditions required under the previously issued authorizations for Phases I and II of the project.

With the exception of the public access at Ponds 9 and 10 at the Napa Plant Site, most of the conditions in the previously authorized permits have been complied with or are in the process of being complied with.

Lastly, at the Commission hearing for the project, questions were raised regarding whether adaptive management measures would be integrated into the Phase III project and whether such measures have been implemented in Phases I and II.

The Habitat Mitigation and Monitoring Program for this project contains a detailed approach for determining when adaptive management is needed and implementing such measures.

The proponent is here today and can provide you with more information regarding how this approach has been implemented with the previous project phases.

We noticed a few errors that were in both staff recommendations and had to do with a crunching of the public access numbers. There's an errata sheet that describes and has the correct numbers.

We would like to update both recommendations to reflect the correct numbers. I am here to answer any questions you might have regarding the recommendations.

Chair Wasserman asked if there was a motion to accept the recommendations.

Commissioner Gioia moved to accept the recommendations.

Mr. Greg Martinelli addressed the Commission: I am the Wildlife Program Manager. I've talked to Mr. Batha about this issue and we accept most of the conditions that are in it.

I wanted to bring up the climate change section. There is a section that states "Special condition 2C-5B has been included in this amended authorization to ensure that public access to the site will be provided in the event that the proposed access is damaged due to the effects of sea level rise by requiring that the California Department of Fish and Wildlife provide alternative public access along the inland boundary of these lands."

We're building this trail in an area that we know will go underwater due to sea level rise. This requirement would require us to have to replace this access in the future.

There is some language in the previous document that states that we would have to come back to the Commission and we would have a discussion to see if there was some appropriate place to do that.

I'm wondering if that language can be put into here so that it's not a requirement that we do it because we know we're building it in an area that you are requiring us to build it in. This area will be inundated by sea level rise in the future.

Chair Wasserman opened up the floor to questions. He ascertained that there were no public speakers on this item.

Commissioner McGrath commented: I have questions about compliance. There are a number of monitoring reports and requirements and I want to address these a little more specifically.

"Mostly complied with" doesn't give me a warm and fuzzy feeling, especially when public access clearly has not been complied with.

There is a requirement for monitoring reports to be submitted biannually, every two years beginning on December 1<sup>st</sup>. There are monitoring requirements that were not included in the hearing stage.

There is also a specific requirement to establish a technical advisory committee and for it to meet annually.

I want to know where the technical reports are and who is on the technical advisory committee? How many times have they met? And I want to know if they were of benefit in trying to resolve the potential conflict between public access and habitat?

Mr. Greg Martinelli replied: The monitoring report is currently being reviewed and it should be out by the end of the week. So we are currently not in compliance with that condition. We are late in our monitoring reporting.

Commissioner McGrath inquired: Has there been any meetings of the technical advisory committee?

Ms. Karen Taylor replied: I am the biologist for the Napa-Sonoma Marshes Wildlife area. The reports are on our website.

I believe the technical advisory committee was more specified to methyl mercury and we did have it. We were not aware that BCDC wanted to be an active participant on this committee.

Years ago we did start and we have been actively working with a number of agencies throughout the Bay. We have worked with the South Bay Restoration Project, Darrell Slaughton out of U.C. Davis and SFBI, to be able to evolve the monitoring because we began monitoring sediment and water and found out quickly that this was not telling us what we wanted which was, what is getting into the food web.

We've been working with this evolution of mercury sampling to find out what's going on in the Bay. And we're trying to not make it project specific. We're trying to make it more regional to be able to allow us to use this information not to just check off a box for our permit.

Commissioner McGrath continued: I appreciate that and I am satisfied that methyl mercury monitoring has been done. My comments and concerns go far beyond methyl mercury.

The requirement says, the permittee shall assemble a technical advisory committee or use the existing Napa-Sonoma Technical Group that shall include Commission staff to share information regarding the status of the restoration and to provide peer review of any adaptive management strategies that may be employed including invasive species control.

There are very ambitious plans to restore up to 100,000 acres around the Bay. It is extremely important that each of these restoration projects learn from each other. There has been a very large adaptive management and public outreach effort associated with the South Bay.

I'm interested in whether or not this permit condition has been complied with and what's being learned and how that is being inputted into the rest of the system. I don't see that in the staff report.

Ms. Taylor replied: I believe it has been done in the monitoring reports. We don't actually specify that the Napa-Sonoma Marsh Restoration Group meetings are with a technical advisory committee. That's what we call them. We don't call it a technical advisory committee.

Early on we were having them meet quarterly and they have been meeting most recently twice a year to once a year.

We are happy to have anyone who is interested in these two projects attend and find out what we are doing. We share the monitoring we are doing and what we are finding out.

At the end of November of this past year we ended up having a meeting where we actually brought it down to Oakland rather than having it in the North Bay because we were trying to extend it out to all of the Bay and trying to encourage people from the South Bay projects to be able to come and find out what we've been learning.

We have been having these meetings regularly.

Commissioner McGrath inquired further: Is there discussion of public access because there was a requirement to prepare a public access plan.

I note on this project that there was a difference in construction where less material is put into an area or it settled more than it would which is one of the things that created problems with public access.

We have a very significant unresolved public access concern before us. The best way to deal with this is planning on a landscape scale and through active communication from both sides.

Can you tell me if this has been part of the discussion in the technical advisory committee?

Ms. Levenson stated: Commissioner McGrath, I believe what you are referring to is the requirement of a public access plan and that appears on page 17 of Fish and Wildlife's recommendation.

A plan was prepared and submitted shortly after the original authorization back in 2007. That plan shows what is existing overall in this North Bay area which is quite large and what was planned.

Fish and Wildlife is in the process of updating their management document and that further explores opportunities for access in this area.

Commissioner McGrath added: And a portion of that has to be dropped from the public access plan because of concerns of endangered species with U.S. Fish and Wildlife Service.

My question here pertaining to Condition Five on page 17, the necessary coordination, the permittee shall fully coordinate with the city of American Canyon, Napa County and the Association of Bay Area Governments, the San Francisco Bay Trail.

So, clearly there has been a failure to move forward on public access. My question is, what does that tell us about the rest of the compliance efforts and is it sufficient to affect my vote on whether or not to authorize this project at this time.

And could this be resolved by a more rigorous compliance with the permit conditions?

Mr. Batha commented: We believe most of the requirements of the permit have been, particularly the monitoring ones, have been complied with.

We know there has been a problem with the public access along Ponds 9 and 10. The Department has proposed a way to move forward on this.

We believe they have proposed such a plan and we received a letter from them on an approach. We think this will work.

Right now we're in the process of finding solutions to the Bay Trail situation and hopefully we'll have more information for you soon.

The Department has assured staff that they intend to work with us to try to assure completion of this trail even though they think it will be a trail to nowhere.

Commissioner McGrath added: Yet, we heard just this morning from the Bay Trail that there isn't even a schedule for completing the work. I remain seriously concerned about this.

Is the availability of the monitoring information sufficient to say that we prejudice no further decisions on this by accepting it even with the compliance problems that exist?

Mr. Batha answered: The letter that we received yesterday stated that they will complete the second monitoring report for 2011 by the end of this week or early next week.

I believe that the information in those reports has been very valuable as well as the information that has been presented at these technical committee advisory meetings that they've had. I've attended most of those meetings.

There is an opportunity to exchange information and I've learned quite a bit. I would say, yes, to your question.

Ms. Susanne von Rosenberg addressed the Committee: I wanted to comment on the relevance of the monitoring data to the current design.

We actually have three ponds that are managed ponds, ponds 1, 1A and 2. There has been ongoing water quality monitoring of those ponds.

Our design has shown that those ponds have excellent water quality on a sustainable basis. We know from our experience with these ponds that the design that we have put together for Ponds 6 through 8 should function in the same way and provide us with excellent water quality as well.

Commissioner McGrath made a request: I've been involved in habitat restoration for over 30 years. I've run technical advisory committees. Most of our habitat restoration projects depend on public funding.

I'm not comfortable voting today in favor of a project which I think is significantly beneficial. I think it needs more work. The issues with public access are not well resolved. I would urge the Department to not put me in a position of voting no which I will if you continue; but to do the necessary work and come in with plan to resolve the public access issues and use the legislative support for public access to sustain this project and the future funding that we're going to need for the restoration efforts.

These efforts will not be successful if the public doesn't see the commitment to public access.

Commissioner Nelson spoke: Given that we're in this unusual situation of having an older permit in front of us that we have some compliance problems with and a new permit that is very similar in a lot of ways, I'm hoping that the staff can explain what we've learned about that first permit and what's different in this one.

We want to make sure that we don't see a year from now the same sort of compliance with this new permit that we currently have with the old one.

Mr. Greg Martinelli spoke: The original permit, the original amendment that was issued for Ponds 9 and 10 Trail never addressed CEQA, so it wasn't compliant with CEQA.

Now we're having to backtrack and try to do that work and we can't move forward until we complete that.

The new projects will be CEQA compliant and we'll be able to move forward with them without any problems.

We built approximately 10 miles of trail and what we're really talking about on 9 and 10 is the Trail was started and there were some improvements that were made and we had to stop due to the FAA regulations. We're really talking about less than one-half mile of trail.

Chair Wasserman commented: If I understand what you just said, the previous permit for which you're seeking the amendment did not go through a CEQA process and so you're now bringing it into CEQA compliance.

Mr. Martinelli responded: I was trying to address this with Bob Batha earlier in the week. It's my understanding that the BCDC permit is a discretionary permit.

As a responsible agency, when you issue that permit you need to ensure that the permit is compliant with CEQA.

In issuing that permit the Department never analyzed the trail on 9 and 10 because it was not part of our project. When the BCDC permit was issued I don't know whether they analyzed the impacts of that trail or if it went out for public review and comment because I would imagine most of these issues regarding the SMART Line and regarding the FAA and the RSA would have come out during that process.

The Department commented in their final EIR on both of those things, on the Napa County Airport's comments that we were not putting a trail there and to SMART saying we were not putting a trail there because they had serious concerns over public safety.

Chair Wasserman stated: And on the new permit that is before us?

Ms. Levenson responded: It has full CEQA and NEPA compliance.

Mr. Larry Wyckoff commented: We will have to do an amendment as part of Ponds 9 and 10 Trail because it was not adequately addressed in the initial CEQA process.

Everything that we have identified as part of this portion of the project has been covered.

Ponds 9 and 10 issues have not been looked at because of the railroad crossing and because of the FAA regulations. I believe once they look at it they're going to be additional issues.

Chair Wasserman continued the dialogue: What do you think you've learned in the process of the older permit that you've applied to the new permit?

Ms. Levenson answered: All of the trails proposed with this as part of the public access proposal have been reviewed under the necessary environmental regulations.

We've have gone back and forth several times with the applicants to make sure the public access is consistent and can be provided in the timeline that is outlined in the recommendation.

There has been a lot of coordination and effort between involved parties to ensure that this public access will be provided in the timely manner that is outlined in the recommendation.

Commissioner McGrath commented: This is extremely important and more than a little bit confusing.

I understand the Department to have said that the nature of the trail on 9 and 10 was not part of the original CEQA compliance and therefore needs some further CEQA compliance.

I can't find the condition. Was the trail along 9 and 10 not part of the original requirement or the public access plan?

Ms. Levenson replied: It's a small segment of trail. The majority of the public access that was proposed and required was reviewed in a CEQA document. This small segment of trail was not reviewed in the CEQA document.

Commissioner McGrath inquired further: Does the public currently use that as their informal access?

Ms. Levenson answered: I believe there is informal access there. There is an informal pathway at 9 and 10 currently.

Mr. Larry Wyckoff commented: The 9 and 10 trail was never part of the initial EIR that the Department proposed as part of the project.

This was something that came on after the EIR was completed and the maps that were submitted never had the trail going around the RSA. That was something that came in later.

After we got the BCDC permit we realized that we needed to add additional trails so we said, yeah sure, we'll put it on the existing levee top.

That levee top trail was built. It exists today.

The airport said, no, you're not opening that up to the public.

We heard from the railroad and they said, you don't have a public crossing. You're not allowing people to cross our railroad tracks without the proper permits and PUC approvals.

We've been working on this and there are issues. The trail portion on 9 and 10 never was addressed in CEQA. It was never part of our original project.

That was a permit requirement by BCDC to put it in.

Commissioner McGrath continued the conversation: That is extremely helpful. I agree that if this is not dealt with there will be more issues.

I would like to ask the representative for the Bay Trail if they agree with the basic recitation of facts and the problems here.

I want to ask staff to say if the FAA objects to this can we provide an alternative public access location. It is entirely possible that these issues can't be quickly resolved even with the most diligent effort.

If our desire is to segment those and it's appropriate to do so, then we're going to have to make sure that someone is working on an alternative location.

Mr. Larry Wyckoff stated: We agree with that 100 percent. We've been asking for that for two years. We have over 10 miles of the trail completed and open to the public.

We're talking about less than one-half mile that we're getting all the questions about from the Board.

It makes a lot more sense to look at alternative locations for this portion of the trail rather than spending millions of state dollars on a trail that goes nowhere.

Commissioner McGrath added: It's absolutely true that FAA approval and PUC approval for a rail crossing are formidable obstacles that are not readily resolved.

Ms. Maureen Gaffney commented: It is accurate that the trail around Ponds 9 and 10 was not part of the original CEQA and it wasn't part of their proposed project.

We went mostly through the Design and Review Board and Fish and Wildlife to request that it be included. They agreed that it should be included and came before the Commission and said that it was part of their project. It did make its way into the permit.

When we went to implement it we did find that it had not been covered under CEQA. That has been the reason that the Bay Trail and the Coastal Conservancy agreed to spend \$70,000 of our limited grant monies to help the Department with this problem.

We have been through this process now for two and one-half years and it just continues to not begin to address the issues even though we've tried to facilitate it.

The Department has been assured time and time again from the Coastal Conservancy and others that we will pay for the trail construction, the other work that needs to be done.

The Napa County Parks is the one that is taking the lead on working with SMART and PUC on the railroad crossing. They cannot progress until the CEQA is done.

The Department fails to begin to get the CEQA done.

Commissioner McGrath added: And the staff recommendation includes a progress report in June.

Mr. Bob Batha commented: That is not in the recommendation.

Ms. Levenson replied: I believe it will be part of the amendment that is issued granting Fish and Wildlife a time extension to December.

Commissioner McGrath stated: I'm going to withdraw my request to the Department of Fish and Game and thank them for their help in leading me through this complex issue.

Commissioner Nelson commented: The relevant language dealing with public access and sea level rise is found on page 41 of the staff recommendation.

That language does suggest that if this public access is lost due to sea level rise that the applicant would agree to replace the loss to access along the inland edge of the ponds and provide alternative access.

Our mission here is to acquire maximum, feasible public access consistent with the project. I think that means public access over the long term.

Our policies with regard to sea level rise charge us with the responsibility of making sure that public access is going to be there over the long term consistent with all of our permits.

This is a little bit different from a traditional urban-scale development. If sea level rise is going to change the landscape in this part of the Bay area then this public access would be lost.

This language doesn't include specificity with regard to what that replacement access would be like, when it would be provided, under exactly what conditions, at what point we would determine that this access had truly been lost because of sea level rise and the Department of Fish and Wildlife has extensive property in this area.

If this landscape changes in 20 or 30 years and we truly lose public access, part of our job is making sure that we don't lose all public access in this part of the Bay because if this access is gone the permit doesn't require any replacement access. Then we have no recourse.

I want to ask the staff if they read that the same way. How does the staff read this language with regard to exactly what kind of constraints it imposes on the applicant?

Mr. Bob Batha replied: The condition on page 17 of the staff recommendation, in fact, requires that the Department work with the Commission and staff to identify appropriate, alternative inland access.

The reason we require that is directly out of the new Bay Plan policies that the Commission adopted. In my discussion with Greg he pointed out, we intend that all of these levees will probably not be raised with sea level rise.

Most of these levees will probably disappear if we experience the three to five feet of sea level rise projected by the end of the century.

The alternative inland areas may have new conditions including endangered species that will pose problems. In talking with Greg, he's quite willing to work with the Commission and staff to try to come up with alternative access that doesn't impact endangered species and that goes along the inland areas.

It won't be out along the routes that are shown in the staff recommendation. Those levees will probably be gone.

I believe the condition addresses the Commission's requirement in the Bay Plan. It punts down the road with lots of unknowns including, as new habitat is evolving along the new edge of the Bay there could be all sorts of constraints as we try to replace this access inland.

The Department has committed to try to find that. The recommendation requires that they do. We don't know what that's going to look like. I don't think we can know what that's going to look like today.

Mr. Greg Martinelli added: I think Bob is exactly right. There are two other spots in the document that talk about climate change. The language here is, if the public access required under the material amendment becomes flooded or damaged as a result of sea level rise and climate change the permittee shall work with the Commission and other stakeholders to replace the loss of access along the inland edges of the pond if possible or provide alternative public access inland.

It has us working with you to try to find alternative locations as opposed to requiring replacement which is what the language later in the document says.

We don't know what the landscape is going to look like at that time. For you to require us to find public access equal to what we've lost may not be feasible or possible.

Ms. Levenson clarified: There has been a lot of back and forth with this project. I think Greg is looking at an older version of the recommendation.

The version that is before the Commission today has the same language that's in the permit condition which discusses working with the Commission and stakeholders.

Chair Wasserman added: This issue affects a relatively small amount of path and access. The explanation that the language on page 17 is acceptable works for you Mr. Martinelli.

Commissioner Nelson replied: It does. There is not a requirement that it (public access) be exactly the same number of miles of access or other conditions that might not be possible in the future.

It establishes a permit requirement that if we should lose this access it triggers a process to develop some form of replacement access and none of us know at this point what that would look like.

Chair Wasserman continued: And that language is acceptable to the Department.

Commissioner Feldstein commented: The area about the airport that has been referred to, is that in its entirety the area that's in the orange line on the map?

Ms. Levenson replied: The portion that we're talking about is a half-mile area where there is a compliance issue.

Commissioner Feldstein further inquired: On page 21, the language that is crossed out about debris removal, why is that no longer applicable?

Mr. Batha answered: That is because the same condition appears earlier in the document. It appears on page 18, Item 4 at the bottom of the page.

Commissioner Feldstein continued: Is that the same for site access at the top of page 23, Item L.

Mr. Batha replied: Yes. That is now a standard condition in all your Commission permits. It is at the back of the document on page 45, Item L.

Commissioner Feldstein inquired: And on page 31, the primary goal of the project language? Is that now in the front?

Ms. Levenson replied: With this latest recommendation we provided an expanded analysis of public access and how we determined maximum feasible public access with this project.

The goal of this project is still the same and this is the habitat language that has been deleted. This is actually more relevant to the project summary and that is why it has been deleted here.

Commissioner Feldstein stated: Page 43 goes back to the CEQA discussion. Section K on this page speaks to the previous CEQA analysis and it suggested that this did not apply to Ponds 9 and 10.

Ms. Levenson replied: All this additional language is part of the November 2006 document. The language was really repetitive.

Commissioner Feldstein continued: But the reference to the CEQA document from May 3<sup>rd</sup> of 2004, that's the CEQA analysis that did not include 9 and 10?

Ms. Levenson answered: No. It's the November 2006 document. The 2004 document covered Ponds 1 through 5 and then Ponds 6 through 8. That's before the Commission today.

There was a separate CEQA document, the November 2006 document, that was for the Napa Plant Site and this segment of public access at Ponds 9 and 10.

Commissioner Wagenknecht commented: I am a great supporter of this concept in the new permit in that overall it's going to detoxify a lot of the Marsh in that area and bring down some recycled water that is going to be used for farmers in that area.

I'm still concerned about the east side of the river where public access is even a greater issue because it's between the cities.

I'm disappointed in the previous communication issues but this is what we have at this point and I'm looking forward to a timely and rapid completion of what we have been promised all along.

**MOTION:** Commissioner Wagenknecht moved for approval of the staff recommendation, seconded by Vice Chair Halsted on Items 8 and 9 together.

If there are no other comments I will ask for a vote on the motion on Item 8. Are there any opposed? (no responses) Are there any abstentions? (no responses) Everybody else is in favor. It is approved.

**VOTE:** The motion carried unanimously.

**9. Vote on the U.S. Army Corps of Engineers' Consistency Determination No. C2011.002 for Phase III of the Napa Sonoma Marshes Restoration Project (Enhancing Management Capabilities at Ponds 6, 6A, 7, 7A and 8) in the Napa River and Huichica Units of the Napa Sonoma Marshes Wildlife Area (NSMWA).** As to Item 9. Are there any opposed? (no responses) Are there any abstentions? (no responses) Thank you. Then everybody is in favor. It is passed.

**10. Commission Briefing on the Bay Delta Conservation Plan. Chair Wasserman introduced item #10, a briefing on the Bay Delta Conservation Plan.** This is our part of an ongoing effort to keep the Commission apprised of policy changes in the Delta, including the Bay Delta Conservation Plan, commonly known as BDCP. Commissioner Barry Nelson, who has forgotten more about the Delta and California's water history than many of us ever have learned, will introduce the panelists. Each will make 10-12 minute presentation to be followed by questions and answers and comments.

Chief Planner LaClair commented: In staff's ongoing efforts to keep the Commission apprised of policy changes affecting the San Francisco Bay Delta, we are conducting a panel discussion about the Bay Delta Conservation Plan, a key component of the new policies affecting the Delta.

Recent legislation affecting the Delta established the Delta Stewardship Council and directed the Council to prepare the Delta Plan.

The Plan is nearing completion and has a couple of policy gaps. One of these gaps is going to be addressed by the State Water Resources Board and will establish salinity standards for the western Delta and Suisun Marsh.

The other gap is being addressed by the BDCP, which is a policy and regulatory and capital improvement project intended to achieve the co-equal goals of the Delta Plan for ecosystem restoration and water supply reliability.

Today we have a panel of experts who can explain to you and describe some of the tradeoffs inherent in various alternatives.

Commissioner Nelson commented: This briefing is on the Bay Delta Conservation Plan (BDCP) which is focused on the Delta half of the Bay Delta Estuary.

I also work for the Natural Resource Defense Council. I work as part of the water program and work extensively on Bay Delta issues.

We have Jerry Meral, Deputy Secretary with Resources, Greg Gartrell, Assistant General Manager with Contra Costa Water District and Beau Goldie couldn't be with us so Jim Fiedler who is the COO from Santa Clara Valley Water District is with us.

(Using slides) It's important when we're thinking about the Bay or the Bay Delta to step back and look at the watershed and recognize why this is such a remarkable place.

The Bay Delta drains a watershed that consists of 40 percent of the state of California. Because it drains the western slope of the Sierra Nevada and some of the southern Cascades it's also some of the wetter parts of California.

It's an enormous ecosystem and is 40 percent of the land mass of California.

We have jurisdiction over the Bay and we're talking here primarily about the Delta and there's overlap here. This really is one estuary and the distinction between the Bay and the Delta is not an ecological distinction it is a political distinction.

I'm going to talk briefly about the Delta half of the estuary and the importance of the estuary and the challenges that we are facing.

I'll also provide some more detail on some of the state agencies involved with the estuary and then describe two different alternative approaches that you're going to hear about today.

This is the largest estuary on the West Coast and it's an enormously important estuary from an ecological perspective, the Bay and Delta together.

The most important migratory corridor for salmon south of the Columbia River is the Golden Gate running up through the Delta and into the tributary rivers. It is the backbone of California's salmon fishing industry.

It's also an enormously important water supply. Over 20 million Californians in parts of the Bay area, the Central Valley and Southern California rely on this water for all or a portion of their drinking supply. Millions of acres of farmland rely on Delta water.

It's often overlooked that the Delta is primarily a rural place and there are more than a quarter of a million residents living in the Delta. Hundreds of square miles of the Delta are still actively farmed.

Also often overlooked is the enormous network of infrastructure in the Delta.

The first of the challenges facing the Delta is ecosystem health. In the last decade the ecosystem has gone through an unprecedented decline. We have numerous species of fish in the Delta that are in dire condition. Another challenge is declining freshwater inflows into the Delta.

An enormous challenge is land subsidence. Most of the Delta is somewhat subsided. A lot of the Delta consists of organic peat soils that oxidize and turn into carbon dioxide as they're consumed by microorganisms and that land sinks.

In parts of the Delta the land surface is 15, 20, 25 even 30 feet below sea level. With that land subsidence is risk of levee failure and potentially catastrophic levee failure.

U.C. Davis predicted a two-thirds possibility of a catastrophic levee failure with potentially dire consequences for Delta residents, infrastructure, farming, the ecosystem and water supply.

There are invasive species in the Delta that are also stressors to the area. There are concerns about contaminants in the Delta.

One the last challenges that the system faces is the lack of a comprehensive delta plan. We have a Bay Plan.

There has been no comparable plan for the Delta. The Delta Stewardship Council is now trying to write that plan.

In a system as complicated as the Delta, one of the things that has made it very difficult to make progress is the lack of a comprehensive plan.

I will give you a quick review of some of the relevant agencies involved with the Delta. BCDC has jurisdiction over Suisun Marsh, which is part of BDCP's planning area. The Delta Stewardship Council is writing a comprehensive delta plan. The Council was created in 2009. The Delta Protection Commission, which is a pre-existing agency has limited land-use authority. The State Water Resources Control Board has primary jurisdiction over water rights controlling not just pumping in the Delta but all of the rights throughout that whole watershed.

We are here today to talk about the Bay Delta Conservation Plan, which is not addressing all of the challenges in the Delta. It's addressing the twin challenges of water supply reliability and ecosystem health. This effort has been ongoing for six or seven years. BDCP is now approaching the release of a draft plan and you're going to hear about two possible alternative approaches.

The current approach Jerry Meral will talk about. It has been primarily focused on some big investments in the Delta. Greg is going to close his presentation by talking about a conceptual alternative to that, which would still have big investments in the Delta but not as big. It would be more of a portfolio approach with other investments south of the Delta to reduce reliance on Delta water supplies. NRDC was very involved in the development of this portfolio approach. They are two different approaches.

BCDC has jurisdiction over the Suisun Marsh under the Suisun Marsh Preservation Act. As BDCP thinks about possible changes, especially ecosystem restoration activities, some of those have implications for Suisun Marsh and that's something we have jurisdiction over and want to make sure that we pay attention to.

Second, is climate change adaptation. Much of what is happening in the Delta is an effort to wrestle with changes coming at us because of climate change, sea level rise and changes in hydrology.

Those conditions are different from those we face in the Bay but it's important that we learn from the climate change adaptation efforts of our sister agencies to the east. Finally, flows and ecosystems health. Those are things that are certainly within our jurisdiction. We do have flow policies in the Bay Plan.

Mr. Jerry Meral presented the following: BCDC has been a leader in grappling with climate adaptation and it's a pleasure to be talking with you. We are trying to respond in the Bay Delta Conservation Plan to the legislative mandate to achieve the dual goals of ecosystem restoration and water supply reliability.

The Plan is a habitat conservation plan and a natural communities conservation plan. We have over 55 species of concern to us and all of them must be protected. We must contribute to their conservation according to the natural communities conservation planning effort.

We have to have goals for each and every one of those species and a detailed plan of conservation for those species.

So far we have collected and spent most of \$250 million on this plan. It's been almost entirely paid for by the state and federal water contractors. They are expected to continue to pay for the vast majority of the cost of the plan.

The Delta is a result of a post Ice Age recession in which sea level changes really affected the creation of that landform. It's about 9,000 years old. There really was no Delta before then.

Sadly, based on the way we have treated it, it's a temporary landform. I don't think there are any scientists who have studied the Delta carefully who believe it will look anything like what it looks today at the end of this century.

There are four factors that are working against this. One is subsidence. By the fact that it is farmed intensively on peat soils, the Delta is subsiding at a relatively rapid rate. Islands are backed up by peat levees made out of dirt and there is no engineering geology science that says that they can withstand any kind of earthquake event. We are long overdue for a major earthquake event. Most engineering geologists believe that liquefaction will destroy a great many of those levees and all at once.

Another factor working against the levees is an atmospheric river event. This concept has only been around for three years. Everyone here is familiar with the Pineapple Express. An atmospheric event is something that makes the Pineapple Express look like a mild rain shower.

In the last one we had in the Central Valley in 1862 we had 43 straight days of rain, two to three inches of rain a day. The Central Valley at the end of that event was a gigantic lake and it stretched from Red Bluff to Bakersfield.

It was hard for ships of that day to enter the Golden Gate because of the huge outflow of fresh water.

An atmospheric river event of that type would overwhelm every flood defense in the Central Valley. The Delta would cease to exist. These events re-occur about 150 to 200 years. We are near due for an event like this.

Finally, we have sea level rise threatening the Delta. There is a strong geological opinion that says that we really should be looking at more like seven meters of sea level rise. Any significant rise in sea level would overwhelm all of the Delta levees. The cost of trying to maintain these dirt levees against this type of sea level rise would be so many billions of dollars. Given the very low economic value of the islands, the state, the federal government and the landowners will not invest those billions of dollars. So, it's highly likely that the Delta as a land form will not look anything like it does within the lifetime of many people who live in the Bay area today.

While BDCP must respond to the Endangered Species Act requirements of all the species, the ultimate solution to these problems has to take into account geological, climate and other natural-world realities. A lot of discussion that you'll hear today goes to, what should we actually build in the Delta? There's enormous and increasing consensus about what to do in managing California water.

Everyone agrees that some storage, that is surface or underground storage, is advantageous both to water users and to the environment if it's done right. There's a pretty broad agreement that improving habitat values in the Bay Delta ecosystem is a good idea.

What there is not consensus about is, what sort of facility might be the best one to serve all these various goals and to protect us against a very major disaster. The lead candidate now is a pair of tunnels under the Delta. If this facility is built and the state is not yet committed to building such a facility, many people want to know, how big should this facility be?

One view is that it should be as small as possible for a whole variety of reasons, perhaps to save money, perhaps to reduce the water supply to agricultural water users in the Central Valley, perhaps even reduce water to southern California. It's important to keep in mind that when you select an alternative that's going to convey the water from the Sacramento River to the state and federal pumps near Tracy, that you want to be prepared for a bad event. This is an event that is not just likely to occur but virtually certain to occur.

One proposal is for 3,000 cubic feet per second. This facility, if it was run 24 hours a day would allow about two million acre feet a year to move from the Sacramento River to the state and federal pumps. Keep in mind that 50 percent of the Santa Clara Valley, 80 percent of the Livermore Valley, 100 percent of northern Contra Costa County is reliant on the Delta. We here in the Bay area are reliant on the Delta.

Exports in the last 25 years have averaged about five million acre feet a year. So a facility of this capacity in the event of an ultimate Delta collapse would only give you about 40 percent compared to the current situation.

We want to minimize pumping in the south Delta. Many of the ecological problems that we have are coming from the fact that we pump water from the south Delta and this is bad for the fish.

The state is preparing to issue an administrative draft of this plan. It will not exceed much more than 7,000 pages. The EIR and EIS will be issued this summer or late spring at that will run about 16,000 pages.

Mr. Greg Gartrell presented the following: I am Assistant General Manager of Contra Costa Water District. Contra Costa Water District serves half a million people in the central and eastern Contra Costa County. We are 100 percent dependent on the Delta.

One of our interests in this pursuit is water quality. The draft EIR, EIS does recognize that this project does have significant impacts to water quality and this is something that we will be watching with interest. Some other concerns are water supply. If you're going to increase the water supply to the export community from where it is now, that can affect others and their water supply. We will be interested to see how that does affect people.

We are a Central Valley Project contractor. If there is a rearrangement of who gets what, we'll be interested in that. Even though we do not intend to be a part of this project, costs can come back to us in two ways. First, habitat restoration is a couple of billion dollars in estimated costs. Even though the exporters plan to rely on that for a lot of the habitat conservation plan and the restoration properties, they don't intend to pay for it all.

The conveyance costs can come back to us. There are already plans by some of those in the Central Valley Project who are part of the project to push off costs on others like us who are not.

We believe there should be a valid business case for any project. If you're going to build it you've got to show us that it's a viable case.

This project doesn't do much for drought supplies. We've had two six-year droughts in the last 80 years and we're going to have more of them. We'd like to know if the ag[riculture] guys who are going to get 80 percent of the water out of the Delta are going to be able to pay for this when they have a \$14 billion mortgage and are still getting 25 percent supplies six years in a row in a drought.

If they don't, one of two things will happen on that. They will come somewhere else for money to pay for it, which is generally urban areas where they've gone in the past or they will come to northern California for the water. And finally, in our view the impacts must be identified and most importantly, concrete enforceable mitigation proposed.

CCWD has for the last six or seven years had a common theme throughout this process. This is going to be a long process and they are not anywhere near their original schedule. It's going to be another 10 years before anything will be completed, if we all agree immediately on what the project is.

We still have the problem of seismic failure. We still have the problem of floods. We still have the problem of habitat restoration and emergency preparedness.

In CCWD's view we should have been doing these things for the last six or seven years, some have been. There are plans that are being completed in the event of a seismic failure. They are being completed by DWR. Some levees have been strengthened and a lot more could be done on that.

Storage studies have not been completed. Storage is going to be essential in this state. It's the only way you solve the drought problem and it's the only way you really can secure your supplies in the event of an emergency. We have suggested the use of fish screens and this hasn't been done.

Right now the Fish and Wildlife Service, Fish and Game and the National Marine Fisheries Agency are meeting to figure out what to do about the pumping levels in the south Delta. They are hitting their limit. They are three-quarters of the way to their take limit on the Delta Smelt this year. Our belief is that these immediate actions should have been taking place over the last six years and continuing. Then in an intermediate period, get into the Delta Plan starting low-capacity isolated facility if necessary.

Storage plans should be completed and going into effect.

This leads into the portfolio approach that had been mentioned earlier. Studies over the last seven years have found that the peripheral canal posed so many engineering and environmental problems it was fatally flawed.

One of these was that, as proposed, it was basically a ditch and after all the levees failed in a seismic event it would have been under the seawater that comes in.

When they changed it to a canal that was 35 feet in the air and above sea level, that kind of fell down in the earthquake as well.

They were really forced into the tunnel situation.

People have been told for 30 years that if you just take all your water from the north you'll get rid of carriage water and give the exporters a lot more water. This turned out to be untrue. If you take all your water from the north you get less water than you get now under the restrictions in place.

Size of the conveyance really doesn't matter as much as the operational rules matter in terms of how much water you get and how much protection you get for fisheries. New conveyance doesn't do very much in a drought. There are studies that show that if you had this in place now and in a drought instead of agencies getting 25 percent of their contracted supplies, they'd get all the way up to 28 percent.

The problem in a drought is that when you don't have water it doesn't matter how big the pipe is.

If the seismic event occurs during a wet season then the islands will not fill up with seawater but with freshwater. There has only been one levee failure in the Delta where there was significant salinity intrusion and that was in 1972.

Prior to all the litigation studies showed that exporters could get about six million acre feet out of the Delta every year. With the revised biological opinions it can be about five million or down to about 4.8 million.

Taking all your water out of the north gets you about 4.3 million because you can no longer take water out of the San Joaquin River, you don't have the benefit of picking up flows that have to go by the intake facilities on the Sacramento River, Fish and Game [Wildlife] is not letting them make the mistake that we made on the San Joaquin River. They're not going to let them dewater the Sacramento River.

In these studies, it came out that 62 percent of the time the flow in the big peripheral canal with the 15,000 cubic foot proposal was 3,000 cubic feet per second or less.

It was zero 12 percent of the time, which was vastly more frequent than the amount of the time it was full. During 85 percent of the time it was less than 6,000. Recent studies show that operations matter not size. How you operate this system that determines how much flow you're going to get.

Drought supplies don't get better. There are studies that show during a wet year being able to get nine million acre feet per year, but that is kind of a fantasy.

The reason for this is because in 2011 we had a very wet year and the pumps shut down in the middle of it, not because they were taking fish, they could pump all they wanted. They shut down because there was no place to put it.

It's the same problem as the big storm event. These big storms don't just hit northern California up in the Sierra. They hit the whole Valley. And when this happens the farms are flooding and there is plenty of water and people stop watering their lawns and nobody needs the water. If you're going to take that big gulp that they talk about you really need storage.

The other thing that has changed here is the operations. You're no longer under the current proposal going to have a fixed water supply. It might go up and it might go down.

Where we started in this portfolio approach is, let's take a look at where you can go on the other end and see how far you can go with that. Start with a small capacity, we know this can work. Their own studies have shown that it can. It can be expanded if needed.

A 4,500 cubic feet per second tunnel is one of the proposed conveyances. It doesn't mean that you can't come back and drill another one later if you can demonstrate you can actually behave yourselves and not take more than you're permitted; you can finance it, you can move these things forward.

We started with the operations that are protective of the fisheries. These are the ones that Fish and Wildlife Service and National Marine Fisheries said are the ones that they can permit now and the ones that will be in effect if fish populations don't get better.

Take some of that money you saved and put it into increased recycling, conservation and groundwater in the export areas. It's a huge potential for groundwater in the southern California area if they can clean it up. The bond has \$1 billion in it to help them clean it up.

Storage. You're not going to get anywhere on the drought supplies without storage. This is also in the bond.

Levee improvements. We're going to have to live with what we've got for next 10 years before we can have our lifeline through here. It may take longer depending on all the lawsuits and how they come out. The probability is 75 percent that we're going to have one of these earthquakes in the next 50 years. It's 30 percent that we're going to have it within the next 10 years. This is an unacceptable risk to do nothing about. I'd be happy to answer any questions you might have.

Jim Fiedler addressed the Commission: I am with the Santa Clara Valley Water District. I will be giving you our perspective on the Bay Delta Conservation Plan and try to illustrate why the BDCP is important for Santa Clara County.

Our mission is flood protection and water supply. In incorporating that mission we've adopted stream stewardship ethics into providing for the needs for water supply and flood protection for Santa Clara County.

I have given you a copy of our response letter to the portfolio approach that was laid out by Greg so well.

We've had remarkable success in working with BCDC on some important Bay restoration projects.

We are a water wholesaler conveying water throughout Santa Clara County. Santa Clara voters overwhelmingly supported the Safe Clean Water and Natural Flood Protection Initiative by over 73 percent of the voters to provide funding through a parcel tax for the types of programs that you see illustrated here.

We serve 1.8 million people in Santa Clara County, 15 cities, 12 retailers, hundreds of farms and ranches and we deliver over 120 billion gallons annually. We have been transformed from farms and ranches to Silicon Valley.

Subsidence has occurred in Santa Clara County due to the over pumping of the groundwater basin. Prior to the 1920s there was no water agency like us. Farmers indiscriminately pumped from the groundwater. Right after the crash of 1929 the voters in Santa Clara County voted to create the Water Conservation District and they were the predecessor to who we are today.

They also voted to help fund and get bonds for the construction of surface storage reservoirs that were constructed in the 1930s. The rebound of the groundwater basin was a direct result of better conjunctive management of water supply in Santa Clara County. The post-war boom of the 1940s led to a drop in the groundwater basin and land subsidence. It reached its abyss in the 1960s.

This led to two important aspects in the way we manage water in Santa Clara County. One was the importation of Hetch Hetchy water into Santa Clara County. Today about 50 percent of water needs are served directly through the San Francisco Public Utilities Commission through many of our cities in north county.

This was also the beginning of the State Water Project and we became a contractor to the State Water Project to bring state water to the south Bay aqueduct to Santa Clara County. The drought of the 1980s coincided with finally bringing on the Central Valley Project into Santa Clara County. Waters from the CDP came into delivery in 1988.

We're very fortunate in Santa Clara County that we have a groundwater basin to rely upon. Today we have over 300,000 acre feet of usable storage that we rely upon to supply water to our customers. We have three water treatment plants and 10 surface storage reservoirs to supply water to Santa Clara residents. Half of the water needs in Santa Clara County are imported today. Today we use less water than we did in the 1980s.

We believe that under normal conditions we will be able to meet the long-term needs of our community. We are most vulnerable in the area of multi-year droughts. We estimate as much as a 47,000-acre-foot per year deficiency in meeting our long-term needs in Santa Clara County by 2035.

We need to enhance and fully develop our diversified portfolio of our supply system. We will also rely on conservation savings. Today we save over 10 percent of our water needs through conservation. We hope to double that within the next 20 years. We will rely on recycled water as another source of drought-proof supplies. We hope to find indirect and perhaps even direct potable re-use of recycled water to supply perhaps as much as 20 to 30 thousand acre feet per year.

Our new 10-million-gallon advanced water purification facility will be completed later this spring. It will provide us the opportunity to treat wastewater from the San Jose/Santa Clara Water Pollution Control Plant and turn it into a high quality product and use this water to blend it with their existing tertiary-treated water that serve their non-potable customers. We will show that this same technology can be used to re-charge our groundwater basin. On the average we re-charge about 100,000 acre feet of both imported and local water into our groundwater basin. We're also joining forces with the Water Re-Use Research Foundation to look at ways to study direct potable re-use.

Restoring the Delta is very important to us. This is a habitat conservation plan that is looking to sustain species that are threatened. This is a plan over a 50-year period that will be managed to provide for the future for the Delta area. Concurrently with this we are also participating in two additional habitat conservation plans in Santa Clara County.

Our Board has policies that propel us to participate in the Bay Delta Conservation Plan. We believe that continued reliance solely on existing through Delta conveyance for the District's imported supplies is not acceptable because of the instability of the Delta levees and so forth as was described earlier. We know that we have to invest in local and regional infrastructure to work towards sustainability. We have a five-year capital improvement program that is over \$1 billion. Much of this is designed to help us rehabilitate our aging infrastructure.

We know that the current conditions not only for water supply, but for the habitat there is not sustainable. A solution going forward is very important. We realize that we need to rebuild our infrastructure to supply the next generation of residents. We have to plan for the future.

Commissioner Nelson commented: There is a tremendous amount of information that has been happening in the Delta over the course of the last six or seven years. The implications of our efforts for ecosystem health are significant. The ecosystem is in a precarious state and the tab is a large one. The total projected expense of BDCP right now is about \$18 billion.

The work of BDCP intersects the Commission's work as well. I want to revisit the three points that I mentioned at the close of my presentation. The three places where the Commission should focus are first, with regard to the future of Suisun Marsh where BDCP is thinking about large-scale tidal marsh restoration. Second, this is an adaptation effort. The Delta is threatened just as much as the Bay is by sea level rise. And then third, there is very much an open question about how much water the next generation of infrastructure in the Delta is going to divert and how much it will leave in the system and what that will mean for the health of the Bay Delta. We'll stop here and see if you all have any questions or thoughts.

John Coleman spoke before the Commission: I'm on the Board of Directors of East Bay MUD and have been there for 23 years. I'm the Vice President of the Association of California Water Agencies, ACWA. And you are well aware that I'm the Executive Director of the Bay Planning Coalition.

How do all of these go together? It's all linked. The watersheds that ring the Central Valley determine what happens throughout California and goes out the Bay. BDCP is an important process. They need to make sure that the investments that are made in the Delta are wise, thought out from a scientific standpoint. At the same time, the critical goals of protecting the environment, the economy and the water supply have to be linked together and cannot be separated.

Unfortunately, the Administration has not been willing to embrace the issue of storage. Storage has to be part of the equation. Those who are going to be putting up the investment for the conveyance system are going to want a return on their investment. The return on their investment means on high water years you're storing that water off-stream, conjunctive use below ground, whatever the case. So in a dry year that water can then be used that's been stored and you're not taking the water out of the Delta. Instead you're protecting the fisheries and the water quality for those who are still relying on it, such as Contra Costa Water District.

You cannot separate BDCP, the water bond and the governor's conveyance proposal. Everybody is trying to separate the three. They are linked together because you cannot do one without the other. This applies to Bay planning because you need to make sure that the levees are stable and secure. One way to do that is using dredge material.

The other thing you can do with that dredge material is raise the stability of the islands. This is important because the agriculture that is grown in the Central Valley is one of our most important industries in the state of California. Over a third of what is shipped out of the Port of

Oakland is ag that's grown in California. This is moved by road, by rail and by vessels through the Delta down to Oakland. All the fertilizer that goes into the state of California to grow that agriculture goes to the Port of Stockton.

I hope BDCP is successful. I've worked with Barry on some of these issues. In my role at ACWA I'm trying to bring together the north and the south in our interests because we are one state, we are not two states. Our state is linked by water and energy. Until we get over that barrier of north, south, agriculture, urban – we're not going to succeed. BDCP offers a road map to getting there.

Commissioner Vasquez commented: This is the third time this week I've heard about the portfolio concept and I'm still not sure what that means. Commissioner Nelson replied: My most recent blog post has a link to all of the information you might want to see regarding the portfolio-based approach.

The current focus of BDCP in terms of where it's planning on spending the bulk of its money is a very large facility, roughly 35 miles long. Each tunnel would be roughly 40 feet in diameter to move water. There will also be a very large investment in habitat restoration, potentially 80,000 even 100,000 acres of habitat. This is a very large habitat restoration program.

The water users who would have to pay for that facility are asking us a simple, honest fair question. They want to know, are we going to get enough water out of that big new facility to justify what is currently expected to be a \$14 billion cost. It could be a higher cost ultimately.

There has been a lot of tension over whether from a scientific perspective it's possible to justify enough water diversion to justify the expense of that big facility. What the portfolio approach does is test something different. What if we built a small facility and save a significant amount of money. What if we build half the amount of habitat restoration and save money? And what if we spend some of those savings on a portfolio of investments, recycling, efficiency, storage, levees? Can we put together a package of investments, a portfolio of investments that will outperform and maybe even be a little bit less expensive than the current big approach?

It's very much a conceptual alternative. Those of us who have worked on it have questions about parts of it. So the question we have is not whether BDCP is ready to embrace that as the answer but will BDCP analyze that alternative so that we can evaluate it.

Commissioner Vasquez added: The one thing that Solano County has done really well is to protect agriculture. So we have a lot of land that can be inundated should someone choose to have habitat restoration in Solano County. A lot of it is still being farmed and that is our concern.

Commissioner McGrath commented: We are blessed to have people committed to good public process and information on very difficult issues. I'm going to suggest to Barry that there is another metric that I'd like to see brought to bear. We've got broadly-stated through Delta conveyance versus pipeline conveyance. There are going to be some changes with sea level rise. One of the metrics I'd like to see used is the flooding and loss-of-life metric. I'd like to see us start to grapple with the moral hazard question.

We have 250,000 people at risk in the Delta. We're talking about an event that could kill 30,000 people. In going forward and thinking about these things are we increasing our moral hazard or decreasing our moral hazard? If at some point we have something that will allow people to safely move into the Delta area, are we sure they are in a location where they will be safe or are we looking at that 30,000 increasing? I'd like to see this question grappled with a little bit. Are we in comparing alternatives increasing or decreasing the human health risk?

Mr. Gartrell replied: That really is in the purview of what the Delta Stewardship Council was set up for. This comes down to should we continue to allow people to build new homes under sea level?

Chair Wasserman had a question: Given the overlapping jurisdiction that Barry described in the very beginning, from the Administrations perspective what do you see as the role of BCDC in the development review approval of the BDCP Plan? Mr. Meral answered: Well I think Barry was correct in pointing out your jurisdiction in the Suisun Marsh. And BCDC has to oversee and approve things in the Suisun Marsh Plan. The Suisun Marsh has its own habitat conservation plan that is being implemented now. What I would suggest in terms of your jurisdictional issue would be to see whether the proposals that we put out both described in the plan and described as far as impacts go in the EIR/EIS matches what you think should happen in the Suisun Marsh.

I do think that everything that happens in the Delta is going to affect the Bay to some extent. As a responsible agency you will want to look especially at the EIR/EIS and see if we've adequately covered the impacts on the species that are of concern to you. We've actually had a lot of scoping on this. We are now in the stage of working with responsible agencies and cooperating agencies under the federal NEPA to show them various elements of the EIR/EIS prior to its publication this summer.

Commissioner Bates inquired: Under the Bay Delta Conservation Plan are you planning a storage facility?

Mr. Meral answered: No. But I heard Mr. Coleman's remarks and agree with them. We will not propose a storage facility as part of the plan. But as part of the Administration we're very supportive of doing storage.

The bond has \$3 billion in storage right now. The Administration and the Legislature are all working together to figure out how big it should be. Commissioner Bates added: What about all the pork that is in there? What about all the garbage that is in it? Isn't it going to be sunk just on the basis of what its current --

Mr. Meral interjected: That's a great danger based on the current bond and I think everyone is really aware of that. On the other hand each one of those pork projects if we were sitting here in the L.A. City Council Chambers they would tell you how important that wastewater recycling facility really is. Commissioner Bates added: That is what the opposition is going to focus on.

Chair Wasserman commented: I want to thank you all and this was very important. No action is required on this item.

11. **New Business.** No new business was discussed.

12. **Old Business.** No old business was discussed.

13. **Adjournment.** Upon motion by Commissioner McGrath seconded by Commissioner McElhinney the meeting adjourned at 3:44 p.m.