

# LOCAL AGENCIES OF THE NORTH DELTA

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August 21, 2013

## **SENT VIA EMAIL (Tina.Leahy@asm.ca.gov)**

Tina Cannon Leahy  
Assembly Water, Parks and Wildlife Committee  
1020 N Street, Room 160  
Sacramento, CA 95814

### **RE: Comments on August 14, 2013 Water Bond Working Group Proposed Water Bond Framework**

Dear Ms. Leahy:

These comments on the August 14, 2013 Proposed Principles for Developing a Water Bond are submitted on behalf of Local Agencies of the North Delta (“LAND”). LAND is a coalition comprised of reclamation and water districts (“districts”) in the northern geographic area of the Delta.<sup>1</sup> We appreciate the Water Bond Working Group’s continued efforts to develop Principles for future Water Bond funding. The comments focus on Framework section VIII. Sacramento-San Joaquin Delta Sustainability.

LAND continues to have concerns regarding the potential use of Water Bond funds to implement the Bay Delta Conservation Plan (“BDCP”). As explained in our comments dated August 5, 2013, exclusion from funding for BDCP conveyance does not ensure that the publicly generated Water Bond funds will be spent appropriately.<sup>2</sup> In order to ensure the requisite public benefits, conditions around the types of restoration projects that qualify for funding are needed – whether the restoration is BDCP related or not.

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<sup>1</sup> LAND member agencies cover an approximately 90,000 acre area of the northern geographic area of the Delta; current LAND participants include Reclamation Districts 3, 150, 307, 317, 407, 551, 554, 755, 813, 999, 1002, 2067 and the Brannan-Andrus Levee Maintenance District. Some of these agencies provide both water delivery and drainage services, while others only provide drainage services. These districts also assist in the maintenance of the levees that provide flood protection to homes and farms.

<sup>2</sup> 2009 Water Bond language on BDCP funding: “Funds provided by this division shall not be expended to pay the costs of design, construction, operation, or maintenance of Delta conveyance facilities. Those costs shall be the responsibility of the water agencies that benefit from the design, construction, operation, or maintenance of those facilities.” (Wat. Code, § 79712.)

In addition to ongoing local concerns regarding all aspects of BDCP – both conveyance and habitat related – the latest round of comments from the federal and state agencies on the latest draft BDCP documents indicate that the BDCP does not meet minimum legal requirements for a habitat conservation plan.<sup>3</sup> Moreover, past experience shows that some funds have been spent on projects that in hindsight should have been better vetted and managed. Well-articulated Water Bond funding requirements are more important than ever given the challenges in providing significant public funding for important ecosystem projects.

Preliminarily, we support the funding framework provided in Senate Bill 42 (Wolk). Most importantly, we believe that publicly funded restoration projects must be well coordinated with local communities and be developed on public lands or from willing sellers. Also, for long term success, such projects must also be carefully planned and well-managed. While additional discussion is likely warranted, we suggest inclusion of specificity in the Water Bond on the following topics:

- Inclusion of adequate funding (in the form of endowments) for the purpose of acquiring, managing, and monitoring the easement in perpetuity, as well as for a compensation program for third-party impacts.

*Reasoning:* The current BDCP does not include secure funding for long-term maintenance of habitat projects. Neighboring landowners rely on any adjacent habitat to be managed properly. Key neighbor concerns include weeds and seepage. Creation of habitat without a long-term, adequately funded maintenance plan will not lead to the desired ecological outcomes and the local impacts will be unacceptable.

- Provide federal and state Endangered Species Act (ESA) protections and “take” authority to neighboring landowners (also referred to as “good neighbor” policies/agreements).

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<sup>3</sup> For federal agency comments on 2013 BDCP documents see: [http://baydeltaconservationplan.com/Libraries/Dynamic\\_Document\\_Library/Federal\\_Agency\\_Comments\\_on\\_Consultant\\_Administrative\\_Draft\\_EIR-EIS\\_7-18-13.sflb.ashx](http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Federal_Agency_Comments_on_Consultant_Administrative_Draft_EIR-EIS_7-18-13.sflb.ashx); comments from U.S. Army Corps of Engineers were “de-posted” from the BDCP website but can be found here: <http://mavensnotebook.com/wp-content/uploads/2013/07/Federal+Agency+Comments+on+Consultant+Administrative+Draft+EIR-EIS+7-18-131.pdf> (beginning at p. 49). SWRCB comments are posted here: <http://mavensnotebook.com/wp-content/uploads/2013/07/SWRCB-Comments-on-BDCP-EIR-S-070513.pdf>.

*Reasoning:* Projects that create and extend habitat for Delta smelt, for instance, should plan for the eventuality that smelt numbers will actually increase in the area. Neighboring lands should not have increased ESA liability as a result of the introduction of new habitat. Most HCPs include such provisions.

- Require that all farmland conversion be mitigated.

*Reasoning:* Case law now makes clear that conservation easements are a feasible form of mitigation for agricultural impacts. (*Masonite Corporation v. County of Mendocino* (2013) 218 Cal. App. 4th 230.) Regarding mitigation for agricultural impacts from conversion of agricultural lands to habitat, special considerations may apply. Yet large-scale conversion of productive farmland to habitat certainly is an environmental impact, and other mitigation measures in addition to conservation easements are available. In the context of the Delta and other predominantly agricultural areas, further discussion about how the Water Bond will ensure maintenance and enhancement of local agricultural economies alongside watershed and ecosystem restoration projects is warranted.

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Thank you for the opportunity to provide these comments. I look forward to further discussions with interested parties to build on these and other ideas to ensure sound public investments in California's water future. Please feel free to contact me with any questions at (916) 455-7300 or [osha@semlawyers.com](mailto:osha@semlawyers.com).

Very truly yours,

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