



BAY-DELTA GOVERNANCE PROBLEMS AND RECOMMENDATIONS

The Delta Vision Task Force has recommended fundamental reform of the agencies governing the Delta. This memo provides examples of problems caused, at least in part, by the current governance structure. It also summarizes the environmental community's governance recommendations.

Flood Management

There are many examples of governance failures regarding Delta flood management issues (e.g. poor permit decision-making and the lack of a Delta flood management plan.) In 2007, the legislature passed a comprehensive set of bills to reform the flood management governance of the Delta. This legislation demonstrates that significant Delta governance reform is possible. The Task Force, the legislature and the Administration should now turn to governance reform designed to address Delta land use and water management issues.

Water Management

The fundamental governance problem regarding Delta water management is that the structures of DWR and the Bureau of Reclamation (the Bureau) encourage decisions designed to deliver as much Delta water as possible, prioritizing short-term water deliveries over the environment, water quality and long-term reliability. Currently, there is no effective governance mechanism to ensure balanced Delta water management. (The Central Valley Project Improvement Act was an ambitious attempt to reform CVP governance. The Bureau has not, however, fully embraced the coequal priority of environmental protection established by the Act. There has been no such comprehensive legislative attempt to reform DWR or Delta water management.) There are many recent examples of poor water management decisions related to the current governance structure:

- DWR and the Bureau ignored and overruled the recommendations of independent scientists and the agencies responsible for ESA implementation, with regard to the operations of the Delta pumps. In 2007, these decisions led to significant take at the pumps – as feared by the scientific community. These decisions also led directly to the federal court's intervention in the management of the Delta pumps.
- The Bureau recently delegated much of the responsibility for preparing the Biological Assessment for the next OCAP ESA consultation to the State Water Contractors and the CVP contractors. The Bureau has excluded other stakeholders, such as fisheries interests and the environmental community. This decision could allow the contractors to play an inappropriate role in defining future Delta operations and evaluating their impacts. (See attached March 6 Sacramento Bee editorial)
- In recent years, as the Delta ecosystem crashed, the SWP pumped hundreds of thousands of acre-feet of "surplus" Article 21 water. This pumping is surplus to normal SWP water contracts. DWR did not ask DFG, FWS or NMFS if this entirely discretionary pumping should be foregone, given the collapse of Delta fisheries. Article 21 pumping helped cause significant damage to the Delta ecosystem.

- DWR and the Bureau have refused to undertake a comprehensive evaluation of the Environmental Water Account. Specifically, they have failed to evaluate actual tier 1, 2 and 3 assets over the past 8 years, in comparison with the requirements of the CALFED ROD. Environmental community analysis of the EWA suggests that each year the program is up to half a million acre-feet short of required levels, and that the EWA has been used to prevent, rather than facilitate, adequate fisheries protection.
- By ignoring the recommendations of the scientific community and refusing to evaluate the performance of the EWA, DWR and the Bureau have refused to engage in adaptive management in the Delta. Adaptive management is a key tool in improving Delta management. Without evaluating past performance, measuring progress in implementing adopted plans, and incorporating the best available science, adaptive management is impossible.
- The Bureau refused to defend Tier 1 of the EWA, by refusing to let FWS biologists testify in defense of Interior's CVPIA B2 policy. DWR also chose not to defend this essential baseline of the EWA.
- During the fisheries collapse in the Delta, state and federal agencies did not trigger tier 3 of the Environmental Water Account, as required by the CALFED ROD. Tier 3 should have been used to provide additional protections for the Delta, because existing EWA assets were inadequate to assure ESA compliance and ecosystem recovery.
- The State Water Project is an "off-budget" project. This status was justified by the claim (not entirely true) that the contractors would pay for the SWP. This structure has given water contractors a great deal of control over the SWP. However, this structure does not reflect the need to protect the Delta ecosystem or Delta communities. In addition, proposals to provide billions of dollars in public funding to construct new SWP facilities have undermined the rationale for the current structure of the SWP.

Land Use

Governance problems regarding Delta land use are caused by several factors. First, jurisdiction over the Delta is shared by dozens of local agencies. Second, the Delta Protection Commission has little authority over the secondary zone – where most of the urbanization is occurring. Third, land use policies do not reflect "on-the-ground" realities regarding the stability of Delta levees, the impacts of urbanization, the status of the Delta's ecosystem, and the far-reaching implications of Delta land use decisions on much of the state. These problems, as summarized below, have resulted in a classic tragedy of the commons:

- Dozens of projects are rapidly urbanizing much of the secondary zone of the Delta.
- No cumulative impacts analysis has been prepared by any state or federal agency to determine the potential impacts of current urbanization patterns.
- No state agency, such as the Delta Protection Commission, has the authority to approve or deny development proposals or other land use decisions in the secondary zone.

Governance Recommendations

In July 2007, NRDC and six other environmental groups submitted detailed recommendations to the Task Force regarding a full range of Delta issues, including governance. Key governance recommendations include:

- Recognizing the special status of the Delta through formal designation as a protected area of special significance. This should be done in a manner that has acceptance in the Delta community.
- Creating a new Delta Water Management Commission to provide oversight for both the State Water Project and the Central Valley Project in order to achieve co-equal ecosystem and water supply goals.
- Reforming the State Water Project by eliminating the project's "off budget" status.
- Strengthening the Delta Protection Commission's authority over the secondary zone (or replacing it with a stronger entity), to prevent urbanization, particularly in areas below sea level and in deep floodplains.
- Creating a Delta Conservancy to advance ecosystem restoration and agricultural preservation, and to stem urbanization.
- Creating a private enforcement agreement between SWP and CVP contractors and a new governance entity to achieve desired Delta flow conditions and export reductions.