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Comments to the Delta Vision Blue Ribbon Task Force On the Governance-related Elements of the Draft Strategic Plan

Submitted by James P. Mayer

At the request of Sunne Wright McPeak, I am offering a few comments on the Delta Vision Strategic Plan. These comments are a follow-up to the testimony that I provided to the Task Force in January. They are informed by the analysis and recommendations made by the Little Hoover Commission concerning the Bay-Delta Authority, as well as numerous other evaluations by the Commission of state governance structures during and prior to my service with the Commission. These comments, however, can only be represented as my personal conclusions, and in that regard I submit them humbly with the hope they will contribute to the difficult assignment before you.

The Little Hoover Commission's review of the CALFED program was conducted at the request of Governor Schwarzenegger and with the concurrence of bipartisan legislative leaders. It was motivated by tremendous frustration with the progress that was being made to implement the Record-of-Decision by the Bay-Delta Authority, and the apparent lack of meaningful return for the investment of public funds to improve conditions in the Sacramento-San Joaquin River Delta. The first conclusion in the Commission's report, *Still Imperiled, Still Important*, was that the Record-of-Decision, while monumental, was not a comprehensive plan for sustaining the Delta as a source of human water needs and an ecological asset of worldwide significance. The Commission recommended the development of a long-term strategy that would lead to a comprehensive approach, both for the Delta and California's waterscape overall. The work of the Task Force is an authentic and historic response to that imperative.

The Commission's recommendations regarding management of the CALFED program focused on strengthening efforts to integrate the activities of state agencies and improving coordination with federal counterparts. This integration is essential to aligning activities and authorities vested in different departments with competing and, at times, conflicting goals and constituencies. The governance structure of the Bay-Delta Authority suffered from a public decision-making venue that

fatally blended state-federal, executive-legislative, government-public representatives charged with confusing expectations to guide/make/oversee policy and management decisions.

The Commission's recommendations were intended to separate management functions from public and legislative oversight and to restore and strengthen existing coordinating structures within the executive branch. The Commission highlighted the importance of data and performance tools to integrate efforts, make policy and management decisions, and enable effective public and legislative oversight. It also encouraged the Legislature to condition and discipline its funding decisions on that data.

By establishing a vision for a sustainable Delta that goes beyond the Record-of-Decision, the Task Force must necessarily go farther than the Commission's recommendations in developing an effective governance structure.

In my testimony to the Task Force in January I attempted to create two bridges: First, from the governance lessons learned from the Bay-Delta Authority to the new governance structure charged with implementing the sustainable vision. And second, from California's experience with other innovative governance structures to the one that will be developed and deployed to orchestrate public efforts to manage the Delta.

Among my comments at the time:

- **New authority and agencies will have to work with existing ones.** California's policymakers have at times created new agencies or structures because they were dissatisfied with the performance of existing agencies. And even when new authorities and agencies were warranted, policy-makers were not careful enough – or did not revisit their decisions – to make sure new functions were working well with existing ones. This is particularly important in the Delta given the tremendous diversity of functions already in place – from the quasi-judicial authority of the State Water Resources Control Board to the delivery function of the Department of Water Resources to the regulatory function of the Department of Fish and Game under the Endangered Species Act. To be effective, the lines of authority and responsibility between the new entity and existing entities must be clear, otherwise new conflicts will emerge and its problem-solving ability will be frustrated.

- **State agencies with responsibilities in the Delta have responsibilities elsewhere.** Efforts to coordinate or integrate activities in the Delta must recognize that those same departments have responsibilities upstream and in other watersheds. Any new authority to direct what those departments do in or for the Delta must be reconciled with policy and management decisions those departments make on their own in other parts of the state.
- **Duplicate coordinating efforts must coordinate.** Similarly, any effort to centralize or coordinate state functions as it relates to the Delta must recognize the existing structures – through the agency secretaries – to coordinate activities by state departments. For example, what will be the relationship between the secretaries of the Resources Agency and the Environmental Protection Agency and any new entity.
- **Consolidation of all functions is impractical.** The design of the governance structure should distinguish and build on what functions and authorities need to be coordinated, which ones need to be integrated, and as a last resort, what needs to be transferred or consolidated.

In reviewing the governance element of the fifth draft of the strategic plan, I believe the task force is on the right track. In particular, the governance element has the following strengths:

The structure is predicated on the primary strategic objective. One indicator of the profound “dysfunction” of the current system is the distrust among government agencies and between constituency groups and the public agencies. This distrust is reinforced by an organizational design and statutory framework that focus individual departments on one public goal without providing an efficient, fact-driven and transparent mechanism for resolving the inevitable conflicts – in long-term policy or daily operations. This distrust at times has thwarted the development of physical improvements that if operated with a trusted and even hand could bring benefits to the ecosystem and the human water system – or alternatively, could be “abused” to consistently benefit one asset at the expense of the other. Having appropriately established co-equal goals, the structure must include a mechanism for advancing and balancing both interests. The proposal to create a California Delta Ecosystem and Water Council provides that missing element.

The structure, by relying on a plural body, creates a public and deliberative basis for decision-making. There are many factors that should be considered in developing the final design of the Council and how it operates, and we have vast experience with this structure in California.

Structured appropriately, the Council could provide a degree of insulation against the undue influence by one interest group, as well as continuity from one administration to another or even one appointee to another. I adamantly concur that the Council should not have “representatives” reflecting geography, expertise or interest group. In both structure and procedures, the Council should be designed and operated as a trustworthy venue for balancing all public values in the long-term public interest. In this rather dire time for the Delta, the interest groups should see the long-term benefits of a public agency explicitly charged with balancing interests, dedicated to making fact-based decisions that are informed by meaningful public input and made in a timely way to minimize damage and maximize benefits. I would be pleased in the future to offer more detailed comments on the choices to be made in designing the Council if the Task Force would find it useful.

The structure coordinates first, integrates second, and consolidates last. The draft is wise to separate land-use decisions, from conservancy activities from the overarching balancing and integration task of the Council. It will be a very difficult job to develop a comprehensive management plan that coordinates and integrates the activities of the various public agencies. But integrating the “software” will be much easier than integrating the agencies themselves. Physical consolidations, such as the federal Department of Homeland Security, are enormously difficult and costly, and often do not accomplish the task of actually integrating efforts. Having said that, we cannot take the time to relearn the lesson from the BDA that integration can be viewed as voluntary or that the loyalties of the public agencies lie with their constituencies. The plan must be detailed and all departments must be held accountable for actions prescribed by the plan. That commitment should not be confused with the need to be flexible and adjust the plan as need. But integration is not a natural behavior for bureaucracies and the Council must have the authority to align activities.

The plan makes a firm commitment to data and public reporting. This is always easier said than done. There are rational concerns that metrics won’t accurately or completely capture the impact of activities. Report cards can be abused by adversaries and the public response to progress is often determined as much by expectations (realistic or otherwise) than by actual progress toward those expectations. Given this resistance, this data collection and reporting will be a critical function of the Council, and the experience with BDA was that it will not likely happen on a voluntary basis. This component of the plan is highly consistent with the approach advocated by the Little Hoover Commission.

The plan deploys funding authority as a strategic tool for integration. The Little Hoover Commission encouraged the Legislature to use its purse-string control to ensure agencies aligned their effort and developed metrics to measure their activity and assess progress. Controlling dollars is one of the most important authorities that have not been strategically used to manage the Delta. We simply will not make progress if there is not extraordinary fidelity between goals, objectives and appropriations. If the Legislature will delegate this authority to the CDEWC, the Council has the potential to coordinate efforts in ways that legal authority or political muscle alone cannot. California will never have enough money to do everything that could be done in the Delta and so resources will always be a limiting factor. But vesting that authority in the entity that will be held accountable for progress also increases the potential for progress and reduces the inevitable excuses about funding. In finalizing the plan and drafting the legislation, it will be important to think through how the Legislature should oversee and interact with the Council, particularly if the Legislature is ceding purse-string control.

In refining the strategy I would encourage the Task Force to consider a couple of additional factors:

- **Adaptive governance.** The plan artfully describes the need for adaptive management. The plan should include a commitment and a mechanism to encourage adaptive governance, as well. Whatever is created in terms of governance will not be perfect and the demands on that governance system will evolve. As part of the five-year planning process, it would be incumbent on the Council to assess the governance structure to determine if authority, responsibility, financing and other elements of the structure need to be changed.
- **Model potential conflicts and the most difficult decisions.** In refining the recommendations and drafting legislation, it would be helpful to model how the governance system would operate in making one or more critical decisions. For example, how will the State Water Board's consideration of future water rights applications be aligned with the Delta workplan? What are the Council's role and authorities in a flood event or earthquake and how do they relate to those of the Office of Emergency Services? (I am sure that the interest groups can pose more difficult challenges.) The Task Force is not obligated to answer every "What if," but the design will certainly be improved if a couple of scenarios were played out.

- **Development of minimum standards for enacting legislation.** The Task Force has appropriately put forth recommendations as a package (and posted a “No Cherry Picking” sign). But the legislative process for enacting the recommendations will necessarily require compromises. In terms of governance, as well as the other elements, the Task Force should be prepared to stay engaged through the process and to provide “hard stops” for political compromises that will fatally compromise the ability the Council to be effective. In the legislative process, all of the legitimate but narrow interests will be involved, and the Task Force may be the only voice for the long-term public interest.

Thank you for considering these comments and suggestions. I apologize that they are not predicated on continuous participation in your process and may not be responsive to specific issues raised during your deliberations. Nevertheless, I am always willing to provide additional analysis or background if that would be of assistance

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