



CVCWA Central Valley Clean Water Association

Representing Over Sixty Wastewater Agencies

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December 4, 2008

Mr. Michael Chrisman
Secretary
The Resources Agency
1416 9th Street, #1311
Sacramento, CA 95814

Re: Delta Vision Committee Discussion Document

Dear Mr. Chrisman:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to comment on the Delta Vision Committee Discussion Document (DVC Discussion Document), which was released on November 25, 2008. CVCWA represents the interests of more than 60 wastewater agencies in the Central Valley in regulatory matters related to water quality and the environment. Included in that membership are a number of wastewater agencies that will be directly or indirectly impacted by the actions identified in the DVC Discussion Document. CVCWA has provided comments previously to the Delta Vision Blue Ribbon Task Force, and repeats some of those comments here, where appropriate, for consideration by the Delta Vision Committee (DVC).

In general, CVCWA is concerned that the two foundational and co-equal goals of ecosystem restoration and reliable water supply fail to recognize the many beneficial uses for the Delta. Further, the co-equal values are directly contrary to each other, and more importantly, fail to comply with the Legislature's expressed intent with regards to maintaining water quality in California, and the Delta. The Porter-Cologne Water Quality Act (Porter-Cologne) specifically provides that "activities and factors which may affect the quality of waters of the state shall be regulated to attain the highest water quality which is *reasonable, considering all demands being made and to be made on those waters* and the total value involved, beneficial and detrimental, economic and social, tangible and intangible." (Wat. Code, § 13000, emphasis added.) Thus, to the extent that the DVC Discussion Document attempts to address water quality issues in the Delta, it must consider all demands and needs placed on Delta waters—not just the ecosystem and export water supplies.

CVCWA is also concerned that the DVC Discussion Document, in conjunction with the Delta Vision Strategic Plan, attempts to change the legal standard for the protection of beneficial uses. One of the identified actions in the DVC Discussion Document is to, “[U]pdate Bay-Delta regulatory flow and water quality standards to protect beneficial uses, [],” and “[f]ully implement these new and existing standards.” (DVC Discussion Document at p. 2.) CVCWA is concerned that the DVC Discussion Document intends to apply a legal standard that contradicts the state’s water quality laws and case law. The legal standard for the protection of beneficial uses is “reasonable” protection, not “full” protection. (See *United States v. State Water Resources Control Board* (1986) 182 Cal.App.3d 81, 121-122 [“The Board’s paramount duty was to provide ‘reasonable protection’ to beneficial uses, considering all demands made upon the water.”].) CVCWA supports the concept of the State and Regional Water Boards evaluating and developing water quality objectives where necessary and appropriate. However, when doing so, the Water Boards must develop such objectives in a manner that is consistent with state law, which requires the “reasonable” protection of beneficial uses. We recommend that the DVC Discussion Document be revised to be consistent with the mandates of state law.

CVCWA is encouraged by and supports the reference to financial incentives for promotion of alternative water supplies such as reuse and recycled water. (DVC Discussion Document at p. 4.) CVCWA and its member agencies strongly support the increased use of recycled water. In fact, many CVCWA agencies in the Central Valley are well positioned to provide recycled water to public and private entities; however, the lack of infrastructure to deliver recycled water, as well as the high regulatory burden associated with permitting projects, constitute very real disincentives. To better implement this recommendation, we suggest that the DVC Discussion Document be revised to streamline regulatory incentives as well as financial incentives to promote reuse and recycled water as an alternative water supply.

With regard to the ecosystem restoration recommendations, CVCWA understands and supports the need to evaluate potential stressors. (DVC Discussion Document at p. 4.) However, CVCWA encourages the DVC and others to refrain from making conclusory statements or suggestions until there is scientifically-supported evidence that links certain discharges to being a stressor on aquatic habitat. For example, potential recommendation no. 4 states that ammonia discharges from wastewater treatment plants require attention. (*Id.*) Such a statement prematurely implies that wastewater discharges of ammonia are negatively impacting aquatic habitat in the Delta. In fact, recent studies indicate the contrary.

In particular, CVCWA is aware of several different studies relative to the issue of ammonia impacts in the Delta, including but not limited to studies by Dr. Richard Dugdale and Dr. Inge Werner. In the case of Dr. Dugdale’s work, the studies deal with possible ammonia inhibition of the Delta food web rather than ammonia toxicity. The studies are yet to be performed in the Delta. It is not yet known if Dr. Dugdale’s hypothesis (ammonium concentrations inhibit nitrate uptake in algal) would apply to the freshwater portions of the Delta, or whether such effects would have any significance to Delta fish populations.¹ With regard to Dr. Werner’s work, the most recent study report indicates that the results from 2006 may not be valid for determining if delta smelt are in fact highly sensitive to unionized ammonia. (See *Pelagic Organism Decline (POD): Acute and Chronic Invertebrate and Fish Toxicity Testing in*

¹ See *Concerns about Ammonia Concentrations in Delta Waters*, Regional Water Board website at http://www.waterboards.ca.gov/centralvalley/water_issues/delta_water_quality/ammonia_issues/ammonia_issues_11jun08.pdf.

the Sacramento-San Joaquin Delta 2006-2007, Final Report (POD Study) (April 30, 2008).) In fact, this final report indicates that test results from 2006 and 2007 yielded contradictory results. It should also be noted that the toxicity test method for Delta smelt changed from static renewal in 2006 to flow-through in 2007 specifically because of poor survival of controls in 2006. In addition, delta smelt are negatively affected by low electrical conductivity (EC), and most sampling sites in 2006 (wet hydrologic year) had EC levels of between 100-200 umhos/cm. When EC was explicitly considered for the 2006-2007 data, “[a]mmonia did not have a significant effect on delta smelt survival.” (POD Study at p. 88.) Thus, the marginally significant relationship for the 2006 data is questionable considering the challenges in experimental methods. Toxicity testing in 2007 found that “*turbidity and EC/salinity were the two most important factors affecting delta smelt survival overall*”.

Because of the variable results, the Central Valley Regional Water Quality Control Board, Dr. Werner and Sacramento Regional County Sanitation District have entered into a working relationship to conduct a study on *The Effects of Wastewater Treatment Effluent-Associated Contaminants on Delta Smelt*. (*The Effects of Wastewater Treatment Effluent-Associated Contaminants on Delta Smelt*, Ammonia Toxicity Sampling and Analysis Plan (Finalized July 28, 2008).) This study, which began in March 2008, was intended to identify the potential for adverse effects of wastewater effluent, in particular ammonia, on delta smelt larvae. (*Id.* at p. 3.) Until this study and others in progress are completed and verified, it is premature for the DVC to rely on preliminary results from early studies to imply that ammonia discharges from wastewater are negatively impacting aquatic life in the Delta.

The Effective Governance and Reliable, Sufficient Funding recommendations under review include the development of an enforceable Delta Plan, and a long-term governance entity responsible for ensuring consistency among state, federal and local government agencies through the Delta Plan. (DVC Discussion Document at p. 6.) CVCWA is concerned that the proposal to create a new governance structure, as well as the implementation of a new Delta Plan could duplicate authority and functions of other existing agencies, such as the State Water Resources Control Board and applicable Regional Water Quality Control Boards (Water Boards).

CVCWA maintains that water quality authority should remain with the Water Boards. Issues related to water quality and wastewater treatment are complex, technical and unique. The Water Boards, having dealt with such issues for more than three decades, are best suited to determine the potential impact that treated wastewater may have on the Delta ecosystem. Such decisions and determinations should not be removed from those with the expertise and frameworks in place of decision-making. To the extent that the Delta Plan may set performance targets for water quality and requires the Water Boards to modify other water quality control plans, the plan must be adopted in accordance with the principles and requirements set forth in Porter-Cologne.

CVCWA appreciates the opportunity to comment on the DVC Discussion Document and we look forward to being a participant on this and subsequent processes that concern our member agencies in the future. If you have any questions, please do not hesitate to contact me at (530) 268-1338.

Sincerely,



Debbie Webster
Executive Officer, CVCWA

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