



December 12, 2008

Mike Chrisman
Resources Secretary
Chair, Delta Vision Committee
1416 9th Street, Suite 1311
Sacramento, CA 95814

Sent Via Email

RE: Additional Recommendations for the Delta Vision Committee's Report on Implementation of the Delta Vision Blue Ribbon Task Force's Strategic Plan

Dear Secretary Chrisman:

On behalf of the Natural Resources Defense Council, the Bay Institute, and our organizations' members and activists, we are writing to provide additional recommendations to inform the development of the Delta Vision Committee's ("Committee") recommendations to the Governor and the legislature. In particular, these recommendations respond to the staff draft discussion document dated November 25, 2008. We appreciate the opportunity to appear on panels before the Committee, and we look forward to continuing this discussion at your final meeting on December 16. While the staff draft includes many positive recommendations that we strongly support, we are concerned that it fails to capture the bold, visionary nature of the Task Force's Strategic Plan and omits several of the Task Force's key recommendations.

The discussion document contains many strong recommendations, drawn from the Delta Vision Task Force Strategic Plan. In particular, we support the following recommendations in the discussion document:

- Updating the SWRCB's Bay-Delta standards and fully implementing those standards.
- Strengthening the SWRCB's programs to clarify water rights, to provide for water rights accountability and enforcement, and to require comprehensive reporting of water use and diversions.
- Reducing per capita water use by 20% by 2020 and expanding agricultural water conservation efforts.
- Requiring more aggressive volumetric water pricing.
- Creating a Delta Conservancy.
- Implementing an ambitious Delta restoration program.
- Developing and implementing streamflow requirements for Delta tributaries.
- Strengthening land use regulation in the Delta.

Mike Chrisman
December 12, 2008

- Creating an enforceable plan for the Delta.
- Creating a new Delta governance entity.

These are important steps towards a sustainable Delta policy that would sustain the environment and provide a more reliable water supply. The Committee should ensure that these elements of Delta Vision's Strategic Plan are incorporated into the final report to the Governor.

However, as noted above, we are concerned that the draft discussion document fails to capture the bold, visionary recommendations of the Task Force in a few key areas. We believe that implementing these additional recommendations is critical to moving towards a successful resolution of some of the most difficult challenges in the Delta, and with respect to California's water supply. Therefore, we offer the following recommendations.

Governance Recommendations

1. Establish an independent group to develop the enforceable Delta Plan and the permanent Delta governance entity at the heart of the Strategic Plan's governance recommendations:

The success in developing the Delta Vision and its Strategic Plan relied first and foremost on the use of an independent task force composed of respected policy makers and leaders who were not representing a particular constituency. The Delta Vision Committee should employ this same successful model to the next step, the formulation of the Delta Plan, and propose the creation of a new Delta Plan task force or commission.

We recommend that the Committee endorse the creation of a study commission, to write the Delta plan and submit it to the legislature for approval and creation of a permanent Delta governance entity. This approach was used successfully in the creation of the Bay Conservation and Development Commission. This group could be populated by some or all of the current members of the Delta Vision Task Force and/or other individuals of equivalent stature and experience. We are concerned that the alternate approach suggested in the draft report, some form of collaboration between the proposed Delta Policy Group and local governments, is likely to bog down in the same patterns of conflict avoidance and failure to change management behavior honestly that has characterized past attempts at planning by consortium, such as CALFED.

2. Ensure that Delta Governance Reform Legislation Provides Oversight of Water Management and Integrates Land Use and Water Management:

As mentioned above, we support the Task Force's recommendation to create an enforceable Delta plan, as a key strategy to ensure the balanced implementation of the Task Force's Strategic Plan. We urge the Committee to explicitly include Delta water conveyance infrastructure and water project operations within the scope of this plan, and to provide for greater integration between decisions regarding water management and land use. The discussion document's recommendations regarding governance do not clearly address this issue.

Mike Chrisman
December 12, 2008

The Task Force was quite clear in its conclusion that the new CDEW Council is required to address the fact that today, “no one entity is responsible for managing important state interests.” *See* Delta Vision Strategic Plan (“Strategic Plan”) at 121. The Task Force also stated that “this structure uses existing agencies authorities to the greatest possible extent, but also seeks to ensure consistency and coordination among them through the creation of a single governing plan (the CDEW plan.)” *See* Strategic Plan at 122. Thus, the Task Force clearly recommended that water project infrastructure and operations be included within the scope of the CDEW Council and the CDEW Plan.

The new governance entity will discharge a function regarding water management different from and complementary to existing institutions like the State Water Resources Control Board, the Department of Fish and Game, and the Department of Water Resources.

It is important to note that failed governance is largely responsible for the federal court’s decision to impose strict limits on State and federal project operations. Reforming the current dysfunctional regulatory approach is a key strategy to give state and federal agencies, as opposed to the courts, greater control over project operations. Finally, by restoring trust in project operations, governance reform can assist in the resolution of Delta conveyance issues. The lack of trust that the projects will be operated in a responsible and balanced manner is a major impediment to progress today. BDCP has yet to address this issue. On the other hand, this reform is a key part of implementing the Delta Vision Strategic Plan. Thus, governance reform is a key piece of the Delta Vision Task Force’s strategy for success regarding Delta conveyance.

3. Make the Co-Equal Goals of Water Supply Reliability and Ecosystem Protection the Centerpiece of an Enforceable Delta Plan, Particularly with Respect to Water Project Operations

As was noted at the last Committee meeting, the staff draft discussion document omits implementation of the Task Force’s co-equal goals of water supply reliability and ecosystem restoration and protection. We strongly encourage the Committee to recommend adoption of the co-equal goals in the Delta plan in a manner which complements existing environmental laws.

In recent years, the amount of water exported from the Delta has increased substantially at the same time that the populations of numerous species in the Delta have declined significantly. During this time, water project operations have focused on maximizing water deliveries while achieving minimal compliance with environmental laws, including the Endangered Species Act. This governance failure (as well as the related failure to meet the requirements of the Endangered Species Act and other environmental laws) has led directly to the crisis we face today. Ultimately, restoring the delta ecosystem, including providing more water for fish and wildlife as recommended in the Strategic Plan, will allow species to recover and help restore water supply reliability, even if it does not result in ever-increasing levels of water exports from the Delta.

Establishing the co-equal goals in an enforceable Delta plan would help ensure that all activities in the Delta, including operations of the state and federal water projects, would be operated to meet more than minimal ESA compliance. This is particularly important for species that are not listed under the ESA, like fall run Chinook salmon that form the backbone of the state’s sport and commercial salmon fishery. This year’s closure of the salmon fishery was estimated to

Mike Chrisman
December 12, 2008

result in economic losses of approximately \$250M and the loss of over 2,000 jobs. The need to protect and restore the fall run Chinook salmon (and the state's commercial and recreational fishery) by reviving the state's moribund salmon doubling program is an example of a need that extends well beyond ESA compliance. The Strategic Plan recommends that progress toward the doubling goal should be a key performance measure. *See Strategic Plan at 83.*

Therefore, we strongly recommend that the Committee's report to the Governor make implementation of the co-equal goals the centerpiece of the Delta plan, and that the report to the Governor recommend that the state and federal water projects be operated to meet this goal.

Conveyance Recommendation

Integrate Delta Vision's Ecosystem, Water Management, and Conveyance-Related Recommendations into the Bay-Delta Conservation Plan Process:

The Delta Vision Task Force has developed a strategy to succeed in resolving contentious Delta conveyance issues while improving flow and operational conditions for the Delta's endangered species and habitats. We have grave concerns that the Bay Delta Conservation Plan (BDCP) process will not be successful without incorporating these specific recommendations. Improved conveyance, in and of itself, will not "fix" the delta. The details of how such a facility would be operated and the targets for improving flows for the ecosystem that drive operational decisions are critical in determining both environmental impacts and water supply benefits. These operational issues, which BDCP has not yet adequately addressed, must be resolved. Delta Vision's Strategic Plan offers a path to do so. It also emphasizes the inescapable link between actions within the Delta and changes in upstream and exporting areas which must be made if ecosystem and water supply goals are to be met.

Specifically, we strongly recommend the Committee's recommendations regarding conveyance and the BDCP include the following elements of the Delta Vision Strategic Plan in its report to the Governor:

- Addressing the key unanswered questions to resolve conveyance issues (Action 5.1.1 and the Blue Ribbon Task Force's letter dated June 30, 2008). Several of these questions revolve around critical unresolved questions regarding project operations and related impacts.
- Attaining the flow improvements for the ecosystem recommended in the Strategic Plan. These improvements in the amounts, timing and frequency of Delta inflow and outflow are critical to meeting the Delta Vision's ecosystem goal, and the Task Force recommended that the SWRCB develop new standards to ensure such improvements. The BDCP analysis of operations and conservations should include meeting targets that are consistent with the Strategic Plan flow recommendations.
- Shifting diversions to wet periods. In addition to achieving specific flow improvements, the Strategic Plan also called for a new operating regime for the Delta, designed overall to decrease pressure on the Delta in dry and average years, and increase the focus on the wettest years, in conjunction with changes in demand management and upstream operations. BDCP should demonstrate how it will shift diversions to wet periods, and identify and analyze the mix of operational and structural elements necessary to do so.

Mike Chrisman
December 12, 2008

- Ensuring that operations of the state and federal water projects are designed to go beyond simple ESA/CESA compliance, in order to fulfill the Task Force's recommendation to manage the Delta for the co-equal goals of ecosystem health and water supply (as discussed more fully above).
- Linking in-Delta actions to changes in upstream and exporting areas. The Strategic Plan emphasized that the water supply goal cannot be satisfied using the Delta alone, and identified conservation and other demand management actions as the largest source of new water for meeting this goal. The BDCP must analyze how conservation, recycling, reservoir reoperation and increased storage capacity will contribute to achieving exporter water supply targets.

By integrating these recommendations into its ongoing deliberations, the BDCP can design a successful program and further the Task Force's balanced vision for the Delta.

Water Supply Recommendation:

Investing in Alternative Water Supplies and Regional Self-Sufficiency:

We recognize and appreciate that the draft staff discussion document includes several actions related to water conservation, development alternative water supplies, and regional self-sufficiency. *See* Staff Draft at 4. However, the document fails to capture the visionary nature of the Task Force's recommendations, and dramatically understates their importance to the success of the Strategic Plan. As the Task Force wrote, "Paramount to the success of this Strategic Plan is a major shift over the next half-century in water use expectations and behaviors of California's communities and farming economies." Strategic Plan at 93. Strategies 4.1 and 4.2 are critical to meeting the challenge of meeting California's water needs and protecting the environment, as evidenced by the graphics on pages 97-98 on the Strategic Plan.

In testimony before the Committee, Phil Isenberg also encouraged the Committee to include bold recommendations regarding these strategies, and he recommended that the final report include a target for how much of California's new water in the future would come from these alternative water supplies. We strongly agree that the Committee's report should be bold and innovative, and encourage you to make these kinds of investments a centerpiece of the report to the Governor.

Financing Recommendation:

Designing a Strategic, Focused Set of Fees to Implement the Strategic Plan:

Given current and foreseeable pressures on the State's budget, as well as the scale and scope of the Task Force's recommendations, a robust, equitable fee structure is a key to success in the Delta. The language in the discussion document regarding fees is quite general. We recommend that the Committee include recommendations that reflect the lessons learned during the debate regarding the proposed Resource Investment Fund (RIF). Water users nearly universally opposed the RIF and the legislature did not authorize its creation in significant part due to the lack of a clear spending plan for these funds. We recommended to Delta Vision the creation of fees tailored to specific purposes. Specifically, different programs should be supported by tailored fees applying to different water users. For example, a fee to support the SWRCB's water rights structure or a science program should be broadly based. On the other hand, given that Sacramento Valley water users do not benefit from Delta levees, they should not be asked to

Mike Chrisman
December 12, 2008

contribute to the maintenance of those levees. Similarly, an ecosystem restoration fee structure should consider the existing CVPIA Restoration Fund. A “one size fits all” approach to fees for Delta Vision implementation is unlikely to succeed.

We recommend that the Committee recommend the creation of a tailored, equitable fee system designed to ensure that the beneficiaries of specific programs contribute to the programs from which they benefit, or which are designed to mitigate problems to which they contribute. This tailored approach is reflected in many other existing state fees.

The intended purpose of a new fee system – and indeed, of any new revenues to implement the Delta Vision – must not be solely focused on executing specific programs and projects developed pursuant to that vision but on expanding and maintaining the capacity of existing and new governance entities to fully discharge their permitting and oversight responsibilities. Past failures to fund the ability of the State Board, Fish and Game and other agencies to monitor, evaluate and regulate Delta activities must not be duplicated in this process.

Finally, such a fee system must include careful safeguards to ensure that these fees are spent for the purpose for which they are created. Given current pressure on the State budget, this is certain to be an issue of paramount concern to water users.

Thank you for considering our recommendations.

Sincerely,



Barry Nelson
Natural Resources Defense Council



Gary Bobker
The Bay Institute