



Association of California Water Agencies

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September 5, 2008

Honorable Phil Isenberg
Chairman, Delta Vision Blue Ribbon Task Force
650 Capitol Mall
Sacramento, CA 95814

Re: Comments on the Delta Vision Draft Strategic Plan

Dear Chairman Isenberg:

On behalf of the Association of California Water Agencies (ACWA), I am submitting comments on the staff drafts of the Delta Vision Task Force Strategic Plan. ACWA is strongly committed to the success of the Delta Vision Task Force. In part, the task force was created in response to requests for “outside the box” thinking about the Delta in ACWA’s 2005 publication No Time to Waste: A Blueprint for California Water. As indicated in the Blueprint, ACWA and its members are dedicated to constructive change in California water management. The ACWA board considers the work of the task force so significant that it created a Delta Vision Committee to review the staff drafts and submit these comments. The committee represents agricultural and urban water users, northerners and southerners, and representatives of the mountain counties and lowland counties of California.

Our comments, attached in outline format, commend the task force and its staff for your hard work on these complicated and contentious issues. We generally agree with the physical vision recommended in the draft for restoring the ecological health of the Delta and water supply reliability. On the other hand, we are deeply concerned about the recommended implementation strategy for accomplishing these necessary physical changes. In fact, we believe that the emphasis on adversarial approaches at the expense of collaborative implementation strategies in the staff draft will undermine essential efforts to finance and implement the physical changes recommended in the draft.

We appreciate the opportunity to comment on the staff drafts of the strategic plan. If you have any questions or would like further implementation, please do not hesitate to contact me at (916) 441-4545.

Sincerely,

Timothy Quinn
Executive Director

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Cc: Linda Adams, Secretary, California Environmental Protection Agency
Mike Chrisman, Secretary, California Resources Agency
A.G. Kawamura, Secretary, California Department of Food and Agriculture

Dale E. Bonner, Secretary, California Business, Transportation, and Housing
Agency
Michael R. Peevey, President, California Public Utilities Commission

Lester Snow, Director, California Department of Water Resources
John Moffatt, Deputy Legislative Secretary, Office of the Governor

**THE ASSOCIATION OF CALIFORNIA WATER AGENCIES
COMMENTS REGARDING THE
DELTA VISION STRATEGIC PLAN – THIRD STAFF DRAFT**

I. Major Themes

- A. *ACWA generally strongly supports the co-equal goals in the plan and its physical vision.* The physical vision for the Delta outlined in the December 2007 vision document was on track and it has been sharpened and improved here. The development of quantified objectives by appropriate agencies is the right approach and lays the foundation for historic change and an adaptive path to a better environment and economy for California.
- B. *ACWA generally strongly opposes the implementation strategy laid out in the Strategic Plan.* The staff draft Strategic Plan relies far too heavily on adversarial implementation approaches rather than collaborative approaches. The Strategic Plan as drafted would trigger years of litigation and political conflict that would divide rather than unite water interests statewide and make it impossible to implement the plan.

II. ACWA Generally Supports the Task Force's Physical Vision for the Delta

- A. ACWA strongly supports the development of a strategy that contains quantified goals and objectives and incorporates adaptive decision-making.
 - i. The development of quantifiable goals – in effect, criteria for success - - to promote the achievement of the co-equal environmental and economic goals is essential for success.
 - ii. Such goals are a logical extension of the CALFED Program and, in fact, are precisely where CALFED intended to go. Accomplishment of the goals should be phased to assure a balance of environmental and economic accomplishments.
 - iii. ACWA commends the Delta Vision Task Force (DVTF) and its staff for their hard work and extensive suggestions on how to proceed down this path. The true measure of success is the establishment of such a set of quantified objectives and the implementation of a comprehensive set of actions to accomplish them.
 - iv. However, Delta Vision does not have the authority, expertise, scientific basis, or due process requirements to promulgate these goals and objectives. This task must be left to the appropriate regulatory processes and agencies, such as the Bay-Delta Conservation Plan (BDCP) and the State Water Resources Control Board (SWRCB).
- B. ACWA supports improvements in water infrastructure that reduce conflict between the co-equal goals.

- iii. Water transfers: The plan should place more emphasis on facilitating voluntary transfers among willing buyers and sellers.
- iv. Reliability Goal: While the draft proposes numerous quantified goals for environmental improvements and other factors, it does not recommend a quantified goal for the amount of water to be conveyed around or through the Delta. The plan should urge that the BDCP include quantified goals for the amount of water to be conveyed through or around the Delta under various hydrologic conditions as well as goals for environmental protection and restoration..
- v. Area of Origin Protections: To protect the interests of upstream areas, the Strategic Plan must commit to appropriate area of origin water right protections.
- vi. Exotic Game Fish: The draft should place greater emphasis on controlling non-native game fish, such as striped bass, which are a major factor in the decline of native species.
- vii. Interim Flow Requirements: As noted, development of such requirements must occur within the appropriate regulatory processes. The requirements proposed in the staff draft have little or no scientific basis that we are aware of and, absent implementation of the conveyance solutions envisioned in the plan, will greatly increase conflict between water use and fisheries. All flow requirements should be based on the best available science. After conveyance solutions are in place and conflict levels between the co-equal priorities are greatly reduced, such experimentation will be much easier to undertake.

III. ACWA Opposes the Implementation Strategy in the Strategic Plan

- A. The Draft often appears to adopt a confrontational tone and relies heavily on adversarial processes rather than collaboration to accomplish its objectives.
 - i. Claims that public trust has not been applied to the Delta are simply untrue. The Bay-Delta Accord, the CALFED Record of Decision, and decisions of the SWRCB frequently rely on the public trust doctrine to balance environmental and economic considerations. SWRCB Decision 1641 alone contains more than 20 references to the public trust.
 - ii. References to “privileged water users,” “preferential treatment,” and promises that the plan will be “discomfiting to most Californians” are not likely to encourage support among the water community for the Strategic Plan. The simple fact is we are all coping as best we can with enormous change.

- A. Governance:** ACWA opposes the creation of an all-powerful bureaucracy, the CDEW, which would control all funds and have ultimate authority over existing institutions.
- i.** The CDEW adds another layer of bureaucracy without clarifying how the authority of other institutions would have to be modified. It would eliminate a system of “checks and balances” that in a democratic system of government allow affected parties the means to advance and protect their interests.
 - ii.** The central governance recommendation of the staff draft runs directly contrary to the advice of the Little Hoover Commission (LHC), which was asked by the governor to review governance in 2005.
 - iii.** The LHC warned against empowering a multimember commission because it would obscure accountability. Instead, the LHC recommended changes to hold the governor more accountable, make the Secretary of Resources responsible for implementation, restore the policy group, and transfer staff of the California Bay-Delta Authority to the Secretary’s office. All of these actions have been implemented. The LHC reforms should be given the opportunity to continue to work.
 - iv.** ACWA supports other recommended changes in existing institutions. The concepts of clarifying and expanding the authority of the Delta Protection Commission, establishing a Delta Conservancy, and moving the State Water Project into a utility separate from DWR all have merit, depending upon how they are implemented
- B. Water Rights:** The staff draft demonstrates a disturbing lack of understanding of the state’s water rights system.
- i.** ACWA and its member agencies strongly support enforcement of water rights in California. We do not support reallocation or expropriation of those rights without due process or compensation. It would be difficult to overstate the level of dispute that will arise from the draft Strategic Plan’s current confused treatment of this subject.
 - ii.** The draft certainly appears to intend to be “discomfiting” to water rights holders. It asserts, with no evidence, that the public trust doctrine has not been applied to the Delta; concludes, with no evidence, that vast amounts of water will be required for Delta outflow; and in several places boldly declares that “the water required will not be purchased,” but rather taken without compensation under the public trust doctrine.

- iii. These premature conclusions fail to recognize the economic importance of water rights to small and large, agricultural and urban communities throughout California. These communities have invested billions of public and private dollars on the basis of these water rights. These community values and investments must also be weighed under the public trust doctrine. Strategies that protect these interests while achieving the quantified objectives of the plan should be favored over any strategy that merely casts aside local community interests as in the staff draft.
 - iv. The draft also ignores the fact that we have in place a water rights system that has overall performed reasonably well in the past. The Bay-Delta Accord, San Joaquin River Agreement, Sacramento Valley Water Management Agreement, Yuba River Accord, and other efforts all involved numerous parties wrestling with complex issues. The SWRCB has wisely preferred negotiated settlements over adversarial proceedings in the past. Each of these agreements reflected the need for change and resulted in significant amounts of water for the environment, while avoiding years (even decades) of conflict in the courts.
 - v. The water community recognizes that conditions in the Delta will require further change. To accomplish that change, the state should focus the SWRCB on its central mission of enforcing water rights, provide it with the resources necessary for the task, and strongly encourage collaborative agreements that protect local interests while meeting the quantified objectives of a science-based plan to restore the Delta.
- C. **Finance:** ACWA urges the DVTF to adhere to the common sense finance principles recommended by the ACWA Executive Director in April. The results in the staff draft are decidedly mixed.
- i. **Create Value:** As emphasized above, the staff draft charts a course for physical change that could achieve environmental and economic sustainability and create considerable value. The water community recognizes that it will bear much of the burden to finance these accomplishments and it is prepared to do so.
 - ii. **Avoid Making Enemies:** For reasons explained above, the staff draft would create enemies throughout the water community, resulting in years of conflict instead of an expeditious and doable finance plan.
 - iii. **Broaden the Finance Base:** Water users should not be the only contributors to the finance plan. The staff draft recognizes that diverse sources of revenue are appropriate but focuses only on a water tax.

- iv. **Avoid Another Academic Debate:** While the draft does not offer a complete practical finance strategy, neither does it encourage endless debate about what “beneficiaries pay” means.
- v. **Rely on Collaborative Agreements:** The draft’s heavy reliance on adversarial approaches will make the development of a finance plan extremely difficult.

V. Closing Comments

- A. ACWA urges the DVTF to rethink its implementation plan and recommend a more collaborative approach.
- B. The true measure of success for achieving the co-equal goals of the DVTF will be the accomplishment of physical change in the system as recommended in the draft as soon as possible. These changes will dramatically improve habitat and provide much needed operational capacity and flexibility in the state’s water supply system to achieve the co-equal goals.
- C. The conflict-laden implementation approach in the third staff draft will greatly delay and possibly prevent those physical changes from occurring. In addition, the implementation plan will make it virtually impossible to implement a workable finance strategy anytime soon to pay for the environmental and economic assets required to implement the plan.