

September 2, 2008

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

Re: Business Water Caucus Comments on Third Draft Strategic Plan

Dear Chairman Isenberg:

The undersigned business and water agency stakeholders provide the following comments on the third staff draft of the Blue Ribbon Task Force's Delta Vision Strategic Plan.

GENERAL COMMENTS

The third staff draft strategic plan is a major rewrite and reorganization from the second draft. Overall, the plan remains a strong document, advancing bold and necessary solutions to achieve the Vision. However, the weaknesses in the document, some from overly prescriptive solutions, others from proposals that stand little chance of political implementation, are detracting from the underlying message that reforms throughout the Delta watershed are necessary in order to achieve the co-equal goals of ecosystem recovery and water supply reliability. As examples of areas in the strategic plan to focus on future amendments:

- The flow recommendations in Strategy 7 lack sufficient scientific support or even rudimentary analysis of their impacts. If these operational criteria were actually implemented, water supply reliability for the state would be devastated and leave hollow the Task Force's premise of ecosystem health and water supply reliability as co-equal goals.
- The governance proposal is still very worrisome. It overreaches, is not implementable and will become a diversionary quagmire halting necessary progress in moving forward expeditiously with the effective and broadly supported priority actions outlined in your Vision and the Strategic Plan. An alternative structure that maintains the Delta Water and Ecosystem Council as primarily an oversight body and relies on legislatively endorsed assignments of Strategic Plan objectives to operating agencies should be substituted within the governance proposal.
- The theme of regional self-sufficiency in water supply needs additional discussion to lend it proper perspective. No region in California now dependent on the water tributary to the Delta can survive without reliable supplies conveyed through (or around) the Delta. The discussion in Strategy 4 recognizes this, but overall the impression one gets is that through conservation, recycling, desalination and other resource tools, demands on supplies conveyed through (or around) the Delta can be significantly lowered. Our analysis shows that at best, these strategies allow supplies to maintain pace with population growth in urban areas, as they have already done for almost two decades. For agricultural areas, especially where supplies are transferred through the Delta, there are few alternatives and bolstering historic supply reliability is simply the only option to

maintain sustainable productivity. Moreover, with regard to the expectation that investments in regional self-sufficiency will provide greater flexibility and robustness to allow reductions in project deliveries at critical times, maintaining the baseline, long-term average of exports is critical to optimizing the value of those investments.

- The draft throughout tends to treat export water as coming from the Delta proper. This is incorrect. Water conveyed for export is appropriated by right and stored in upstream reservoirs during surplus flow conditions in the Delta. Thus the Delta is not a source of export water supply, but rather a transfer point for such water.

Also, we are concerned that the overall tone with which implementation concepts in the Draft Strategic Plan have been couched is unnecessarily threatening. There is a perceived disregard for the centrality of water rights in California's water management structure. There are proposals that wildly inflate outflow requirements without scientific support. There are governance proposals that claim to leave intact the power of existing institutions despite line-item language to the contrary. And there is a seemingly endless expectation of unlimited funds for Delta and water needs at a local level. These will all become battlegrounds rather than areas around which, through additional collaboration and deliberation, workable pathways forward can be developed. Shock and awe makes for a good show, but getting it right is essential to solving the Delta's problems.

Specific Comments

We provide the following comments in sequential order as they appear in the third staff draft strategic plan.

Page 3:

"Current laws, regulations, and management structures are insufficient to resolve these challenges, and better information and coordination alone will not tip the scales. Dramatic strengthening of public policies and institutions is required to move beyond the current chaos and build toward a sound future."

Although this statement may be true with regard to management structures, when it comes to law and regulation it widely misses the mark. California is a heavily regulated state with prescriptions that go far beyond most if not all other states and certainly beyond national standards. Changes in regulatory policies and institutions need to do more than just create another layer of government. Rather, there needs to be a clear designation of the mission, responsibility and accountability for those charged with implementation.

It's becoming harder to discern a commitment to water supply reliability as a co-equal goal in the face of additional regulatory and legal constraints that are proposed in the draft strategic plan. We are less sure today than when this process started that the Task Force remains committed to the "co-equal" construct and would appreciate a clearer explication of such with respect to the water supply side of the ledger. Fundamentally, without an adequate, reliable water supply for the state's economy, there will be little if any ability to invest in Delta ecosystem revitalization.

Page 3:

"Californians' expectations and behaviors regarding water use must also change."

This is unquestionably true at the macro level, and there is much that can and will be done to change behaviors etc. However, such a blanket statement implies that a **reliable, adequate, and affordable** water supply is no longer something Californians should count on. We reject this view, and it certainly should not be solidified as an embedded expectation underlying the Task Force's recommendations. Nevertheless, fundamentally, particularly with respect to the business community and investment expectations, California must provide reliability and adequacy to its economy and residents. This in no way discounts the need to continue to intensify conservation efforts and the development of alternative supplies such as recycled water. California must manage water better. Fortunately, the majority of the Task Force's recommendations, if implemented, will help us do that.

Page 4:

"Adopting these strategies will be hard politically; we see no possible way to implement these policies without discomfiting most Californians."

This is no doubt also true, but the draft should emphasize collaborative processes to generate the political will and capability to adopt these strategies comprehensively. The strategic plan should build the case using existing institutions as much as possible as opposed to creating an entirely new bureaucracy that will find itself struggling against paranoia, inertia, bureaucratic competition and undercutting. New institutions face a very steep learning curve related to the multi-faceted vectors involved in Delta and California water policy and related matters.

Page 4:

"Over the next decades, water use for all purposes will become more expensive and likely more subject to regulation."

This is likely true as well. However, on the regulatory front, new regulations, and existing ones no less, must become more reflective of reality -- operationally and when it comes to resource allocations to meet them. In addition, regulation, whether water quality or ecosystem focused, must reflect changes attributable to climate change and other factors beyond the projects' or anyone else's practical ability to impact. Most important, they cannot be established or enforced in a manner where public resources are required to be expended for environmental investments that are, if an honest assessment were done, ultimately doomed to fail or merely maintain a painful status quo against nature's inexorable march. Changes in the regulatory framework must occur based on the realities in the Delta by allowing reformulation where appropriate and not just layer upon layer of increasing restriction when the science for existing standards collapses (e.g, the X2 standard). Any new regulatory restriction must be accompanied by a review of the efficacy of regulations already in place.

Page 4:

"...water supplies in California are already over-promised."

This statement is patently false. The enforcement of water rights, the development of new water conservation and conveyance infrastructure, the water markets would adequately address this often repeated, but invalid presumption.

Page 6:

"The Wanger cases, in particular, have unambiguously signaled that water delivery systems must now comply with species protection laws."

This is pejorative statement should be deleted. It implies that the Central Valley Project and the State Water Project were deliberately operating outside the law. The obligation of water delivery systems to comply with the Endangered Species Act has never been in doubt. Indeed, operations of the Central Valley Project and the State Water Project have been constrained by implementation of the Endangered Species Act for nearly two decades. Judge Wanger found that biological opinions issued by the United States Fish and Wildlife Service and NOAA Fisheries did not comply with requirements of the Endangered Species Act, but whether the Act applied to the operations of the projects was never an issue.

Page 6 (First paragraph without bullets):

The last sentence in this paragraph could lead to misinterpretation of the conclusions of Judge Wanger: *"...also signal that water needed by endangered species will be provided as a first obligation"*.

In the case cited, the Judge ruled that project operations which cause reverse flows in old and middle river threatened the Delta Smelt. He did not conclude that "water was needed". This is an important distinction. We strongly suggest the wording of the sentence should read: *"Moreover, the remedies imposed by Judge Wanger also signal that the needs of endangered species will be provided as a first obligation."*

Page 11:

The four key themes put forth are a valuable addition to the draft strategic plan. We suggest the following modification to the last sentence: *"Sustainable and reliable 'supply' will therefore require conservation and efficient use of water as well as new conveyance and storage infrastructure that can be operated consistent with environmental protection."*

Ultimately, we believe further ecosystem investments and construction of infrastructure improvements in conveyance, surface and groundwater storage can result in a long-term average increase in water supply for consumptive uses.

Page 12 (Fifth bullet):

The fifth bullet cites *"the principles of reasonable use and public trust are not routinely incorporated into the management of the Delta"*, is simply incorrect, and there is no evidence presented to support it.

All recent decisions by the SWRCB explicitly cite these doctrines (e.g., D-1630, D-1641 D-1485) as support for the SWRCB's authority to impose the type of water quality objectives

adopted notwithstanding their impacts on legal beneficial users of water. Indeed, by definition these principles are applied at every turn, within the discretion of those accountable for their enforcement and application. The fact that some interested person or group does not agree with SWRCB's the exercise of discretion is not equivalent to these doctrines being ignored.

Page 12:

"There is insufficient data about many issues critical to the management of the water system...."

This is partially true, but due to the lack of data, or more critically interpretation of the data, there exists an even bigger problem when it comes to environmental "management" and regulation. Perhaps this was implicit as an "issue" critical to management of the water system, but it merits calling out that there is a widely recognized weakness in the analytical capabilities and subsequent conclusions used to validate environmental regulation. As an example, the recent emphasis on "other stressors" reveals a surprising and decades-long lack of regulatory focus on many factors causing environmental degradation in the Delta. This lack of data is critical to the management of the Delta ecosystem and should be stated separately.

Page 13 (List of 18 strategies):

Strategy #9 is *"Establish an effective adaptive management framework to support ecosystem revitalization."*

It will be crucial to start with a realistic and rational formulation of what this means. Expectations must reflect and consider the altered nature of the Delta system, climate change perturbations to come. There is a need to somehow alleviate the regulatory constraints that can often preclude the more promising, flexible and comprehensive adaptive approaches from being carried out. Moreover, true adaptive management must incorporate a process to evaluate the efficacy of environmental uses of water. To date, the practice has been to dedicate and manage additional water for environmental uses if the prior dedication and management of water for such purposes have not achieved the desired outcome. True adaptive management must consider the potential for abandoning a particular environmental use of water if that use is ineffective.

Page 14 (Governance Discussion):

We strongly maintain our belief that the governance proposal overreaches and is not implementable as proposed. An all-powerful Delta Ecosystem and Water Council (as proposed) will not be broadly supported. California cannot wait another three years for a CDEW Plan to be developed before taking action. The Blue Ribbon Task Force should instead assign specific responsibility for implementing the strategies it recommends to existing agencies and recommend that the Council be formed as an oversight body. The Council would monitor the implementation of the Strategic Plan and report to the state and federal administrations on implementation successes and shortcomings, and develop appropriate refinements as necessary. This structure, with legislative and administration endorsement and force of law, would be sufficient to spur progress and ensure consistency.

The Draft Strategic Plan makes far too much of the arguable assumption that the problem with CALFED was its structure and lack of authority. The primary problem was the lack of leadership and political will – problems that institutional and structural changes proposed in the Strategic Plan are unlikely to resolve and may even exacerbate further. Without strong and

effective leadership from political leaders, CALFED was forced to duck tough decisions and ignored fundamental drivers of change, including some which only recently have become known with clarity. Delta Vision has begun to remedy this situation and is providing the initial leadership, key elements of needed change, and direction. Supporting political leadership at all levels must follow. With that, direct delegated authority to implement the Vision and Strategic Plan is sufficient.

Page 14:

In the discussion of new governance and targets etc., the plan suggests objectives for ecosystem and water supply will "*incorporate any plan developed under species protection laws....*" We presume this would include the Bay-Delta Conservation Plan (BDCP) and we strongly urge, once again, that the Task Force call out the BDCP specifically as a nearer-term component of its Plan.

Page 15:

"In the proposed structure, water required to revitalize the ecosystem will not be purchased, but will be provided within the state's water rights system by exercising the constitutional principles of reasonable use and public trust."

This statement is still counterproductive and inflammatory and it needlessly eliminates a potential tool to obtain water for ecosystem revitalization. Taken to its logical extreme, the ramifications would be truly, and unnecessarily seismic in impact. Its presence in the document hands opponents of Delta Vision an iconic rallying point that threatens the entire effort. Whether it is the Katz bill (Water Code section 1800) or Costa-Isenberg (Water Code section 470), California has taken a careful and well thought-out approach to exchanging water between beneficial uses, including environmental uses. That approach acknowledges that the market has a role to play and should continue to be relied upon where it can result in balanced, collaborative means to an end versus relying on "takings" which will lead to, disenfranchisement, disproportionate results, litigation and endless delay.

Page 15 (Delta Operations Team)

This team should provide a consultation role only. Day-to-day operations should be left with the Utility which will have that expertise.

Page 16:

"... 'wet-period diversion system'....we must take advantage of abundance when it exists."

Yes, we believe that is the best strategy. However, this version of the Strategic Plan, as written, raises real questions as to whether this strategy is actually accepted since there are specific operational constraints contained in the document that make the "wet-period diversion" concept a mirage. This includes, *a priori*, the statement that "the wettest periods also have special ecological value that should not be sacrificed." This concept will entail a balancing, rather than identifying one use as sacrosanct, and it should be better portrayed as such.

Page 17 (Strategy 7 Flows):

Flows for Strategy 7 seem to directly conflict with the "wet-period diversion" strategy. Increased outflow from February to June and positive flow in the south Delta during the same period would significantly constrain exports in the months when peak runoff occurs – i.e. the “wet-period”. The document needs to clarify that such flow expectations or requirements would only be imposed during short time-frames within the February to June period, consistent with scientifically justified ecosystem needs while still operationally achieving the water supply co-equal goal.

Page 17 (Integrating flood control and water supply planning):

In this section, it is stated that “*much more storm water could be harvested directly and used for low-grade uses such as landscape irrigation and toilet flushing, as part of a regional self sufficiency strategy*”.

This is greatly overstated. The most efficient storm water harvesting technique is on-stream storage reservoirs where large volumes can be efficiently collected in elevations where water can be gravity fed to its intended areas. Almost all feasible locations for such reservoirs have been developed. While many regions already effectively use storm flows below storage reservoirs, in urban areas it is seldom feasible to harvest significant additional storm water below such reservoirs cost-effectively. This activity requires massive pumping and distribution systems that are only to be used a few days per year and they require large, land intensive storage or spreading basins to utilize the water. These waters appear in the winter and early spring periods, generally, and coincide when landscape demands are nil and met by natural precipitation. Further, such water would have to be introduced into the normal potable water systems to be available for toilet flushing, which would require massive investment in additional treatment capability to treat water rarely available, leaving these facilities idle much of the time. In newly developing areas, storm water harvesting and recharge can be built into urban design, but even so, the effects are marginal relative to overall water budgets. Also, there are significant questions related to water quality impacts to both surface and groundwater which would have to be assessed prior to any widespread implementation.

Page 18:

We strongly support the restatement that “*new facilities for conveyance and storage, and better linkage between the two, are needed to better manage California's water resources, for both the estuary and exports.*”

We endorse the need to complete the Surface Storage Investigations as soon as possible. We appreciate the expressed support for the Old and Middle Rivers barrier project, but the description here includes a siphon, which is no longer contemplated.

Page 18, (Storage for the co-equal values):

This section should also discuss how the existing inefficient and inflexible conveyance system strands current investment in storage north of the Delta, as well as south of the Delta. Stored water in reservoirs upstream of the Delta cannot be efficiently conveyed, leading to uncontrolled

storage releases of water that could otherwise have been conveyed to beneficial uses or storage downstream of the Delta.

Page 20:

The description of the ecosystem challenge is appropriately described as moving beyond a species-by-species approach, but we remain highly skeptical that the actual operational and flow recommendations in the Strategic Plan really meet the compatibility principle espoused in the following: "*The task for California today is to restore the underlying ecosystem structure, functions, and processes that will make a thriving ecosystem possible in the 21st century, and to do so in a manner that is compatible with reliable water diversions upstream, within, and exported from the Delta.*"

Page 23 (Financing)

We suggest a rewording of principle #1 as follows: Local and regional public and private beneficiaries should be identified and assigned appropriate proportional shares of revenue obligations and of risks and liabilities, while the general state-wide public is responsible for actions of a broader benefit.

Page 24 (Reporting Progress):

The notion of progress reporting is useful. More discussion and elaboration on the "*independent assessment teams*" is needed. Among the questions, for example are why these teams would be separated from the proposed Council's function and how they would be staffed, funded and operated. The Delta Flow performance measures need to be fundamentally modified, or deferred, as discussed in greater detail below.

Page 24:

We are opposed to the introduction of the notion of "*Water Use Productivity*" as an "*integrated concept*" to be embedded in the Plan and recommended as a useful management tool. This idea is hugely problematic, as we noted in our comments on the previous drafts and we refer you to those comments. Not only would this be a revolutionary methodology of social engineering, completely at odds with California's water rights system, but it is picking a fight with no real upside that, like the overall CDEW Council proposal. It would drain energy and divert resources from moving forward with the actions and policy changes that have real near and long-term value.

Page 25:

A performance measure of "*Gross regional product from sustainable agriculture*" might sound good as an academic exercise, but it is a value-laden term and will only trigger battles and confusion. It could easily conflict with market signals and interfere with individual business choices for little, if any, real value.

Page 29 (Phasing):

The discussion of a 40% per capita reduction of water consumption by 2050 is radical but not inconceivable. Such a reduction would, however, mean the essential elimination of use of all but

recycled water for ornamental irrigation. Since large indoor conservation opportunities have already been realized through plumbing code changes, and short of a widespread move to waterless urinals in homes and composting toilets, indoor residential water use is not likely to decline significantly. Outdoor uses would bear the brunt of the change needed to achieve the suggested figure. If the Task Force is serious about this objective, they should be more explicit relative to the personal changes all Californians would have to accept, and specify that the Legislature would need to propose such an outdoor watering prescription. This is a dramatic shift in public policy that would be inappropriately imposed through local water agencies' "water use efficiency" programs, as contemplated by the Task Force.

In addition, it must be noted that to date, "reasonable use" under Article X, Section II does not necessarily provide the authority for a dramatic reallocation of water when overlaid on the existing water rights system. Yes there could be some shifts, but the market can do it much more quickly with considerably less contention as well. At some point, it becomes severely difficult to advance the idea that areas that have invested in developing water supplies and have exercised long-held water rights over the years would have to give them up to serve areas that didn't invest or are just "new" demands on the system.

Page 29 (The new section on "Phasing"):

This new section is welcome and necessary but needs additional work. Of particular import is the discussion of the requirements needed for the transition period from now to the point when new infrastructure is in place to enhance operational flexibility and adaptive management capacity.

"The schedule of phasing seeks to build on existing competencies but begins with bold steps designed to decisively shift the institutional architecture of the State and the Delta, yet it balances these with a realistic allocation of available energy and resources."

Though not terribly clear, the phasing needs to be spelled out much more. Additionally, the "new governance" is not something that should be at the forefront of activity. It can be contemplated further and refined if done at a later phase. This is also the case with water use efficiency and regional self-sufficiency goals and targets. Moving forward on the long road to getting new facilities in place and continuing a focus on better understanding the ecosystem are what need to be the up-front priorities. Those are the most limiting and the most promising areas of the challenge Delta Vision is trying to address.

Page 31 (Strategy 1 - Vastly improve the efficient use of water):

In the second paragraph, it is stated "Though we enjoy the benefits of a generally temperate Mediterranean climate, these rates [of water use] often exceed the national average." Mediterranean climates are defined by warm, dry summers with little or no precipitation. It is because of this climate, not despite it, (coupled with a widespread desire to maintain decidedly non-Mediterranean landscapes) that California's per capita use often exceeds national averages. In all but interior desert regions, year-round rains are common, and provide for a significant portion of outdoor irrigation needs. Therefore, California's per capita demands are proportionally higher due to summer landscape demands being met through irrigation, all other factors equal.

Page 31 (Strategy 1):

The admonition to "*reduce the water demand necessary to produce the crops that feed us*" comes across as naive. There is a fixed evapotranspiration demand for each crop, which varies by local climate and soil conditions. While there are means to be more efficient in terms of applying what is needed to produce marketable crops, the draft needs to recognize plant demands are fixed. This should be rewritten to reflect a focus on efficiency and maintaining crop yield with less water applied.

Page 32 (Water pricing discussion):

The overall tenor of the discussion beginning here implies that increasing water prices will spur much conservation and use changes, particularly in agriculture. This is questionable. Only in urban areas where treatment costs and infrastructure replacement are driving costs in excess of average inflation are costs of water relative to other commodities rising. In some agricultural regions, water costs are not facing such pressures and much of the infrastructure is now paid off and does not require massive new investment. In agricultural regions served by the SWP, the predominant contract costs are fixed so that the current judicial and regulatory-induced shortages have already created significant increases in the effective unit rate of water delivered. In addition, the concept of promoting conservation through water pricing is premised on the principle that if the incremental cost of the last block of water used to irrigate a crop is more expensive, the farmer will have an incentive to develop more efficient irrigation practices to avoid the use of that last block of water. Although there may be some rational basis for this concept in a system that reliably delivers 100 percent of the water required to meet demand, its application in agricultural areas that suffer chronic water shortages is only redundant and punitive. In such areas, farmers already have incentives to conserve water. Outside of additional regulatory costs and fees being levied on water supplies, we do not see water costs driving change that is not already evident.

Page 32 (Second bullet, discussion of connection fees):

Most connection fee structures already account for demand differences among connections. No legislation appears necessary.

Page 34 (Agricultural Water Management Plans):

The idea of "*Agricultural Water Management Plans*" similar to UWMPs, is worthy of investigation. There are no doubt issues unique to agricultural water management that might make the concept unwieldy, if not unworkable. Further development of this idea will be necessary to discern its utility.

Page 36 (Under regional self-sufficiency):

The Plan calls for a doubling by 2015 of the "*current percent of treated urban effluent that is captured and reused....*"

This target is not substantiated and reflects what we believe is an unrealistic expectation regarding the financial resources needed and available meet such an outcome. Also, a one-size-fits-all approach such as this is ineffective and doomed from the outset. The same criticisms and

concerns apply to the target of tripling desalinated water supplies. Moreover, if these targets are to be achieved by "*local water agencies*", do they apply to each agency or is this an aggregate statewide target? The ability of agencies to fund these sorts of initiatives vary greatly and the water supply portfolio of each will impact the actual need to pursue these resources.

Page 36 (Storm water infiltration):

The storm water infiltration goals for 2010 will be problematic as well. Water quality questions abound. Recent troublesome processes pertaining to recharge of recycled water will be replicated if this moves forward on such a timeline. Once again, there seems little acknowledgement of the complexity of the issues involved, the breadth of perspectives of various agencies, and the cost implications to already tight budgets.

Page 40 (Strategy 4 discussion):

The first sentence in this strategy discussion would be absolutely on target if the underlined words were added "...*the ability for diverters to rely upon a sufficient and predictable quantity of surface water is inextricably linked to the ability to plan, fund and implement a more diverse water supply portfolio.*" Without sufficiency, predictability is of little value.

Page 40 (Strategy 4):

Most of the write-up here gets it right. However, even though it is declared, "*The degree of flexibility needed to meet the Vision's co-equal goals is not understood well enough at this point to define numeric objectives -- and may never be.*", yet the document still presents numeric and temporal flow objectives. This is inconsistent. The lack of understanding expressed is true, and the numeric objectives should be consequently deleted.

Page 41 (First paragraph discussion of conveyance):

Stating that conveyance is the linchpin to managing Delta water supply and ecosystem functions is an inescapable fact, and is strongly endorsed. The need to have relatively larger conveyance to accomplish the "*wet-period diversion*" scenarios should be evaluated as discussed in this section, along with supportable ecosystem flows, as discussed further, below.

Page 49 (Strategy 7 - Ecosystem flow discussion):

We strongly object to inclusion of these flow objectives which appear to have been developed in a vacuum, with no water operation's input, scientific justification or peer review. All numeric flow objectives should be removed and replaced with narrative objectives that state the biological benefit sought and a specific, systematic process to define and evaluate implementable numeric flow objectives. Those flow objectives should be subject to scientific peer review to justify their adoption, and water impact analysis and implementation analysis to assess their effects and practicality and consistency with the co-equal goal of water supply. Where experiments are sought to refine the science or advance a theory, the thesis should be stated as an objective for experiment only. Water costs for proposed experimental actions should also be calculated and assessed for ease of implementation. No objectives should be adopted until a practical means of implementation and resulting trade-offs are understood, if not completely, at least to a much greater level of certainty than exists today.

“California’s vast network of reservoirs, canals and pumps, as well as the major reconfiguration of the Delta’s channel geometry and landscape over several decades, have homogenized flow conditions across seasons and reduced the total water supplied to the ecosystem.”

Certainly, there is less outflow in the aggregate. However, analysis within the BDCP has shown X2 patterns have changed little since the 1950’s as a function of unimpaired runoff. That is, spring outflows remain quite variable in response to weather.

“Delta outflows in February through June (as measured by the location of the two parts per-thousand salinity threshold, a.k.a. the “X2 line”) have a strong and statistically significant correlation with the abundance and/or survival of numerous estuary-dependent organisms in the Bay-Delta ecosystem.”

Most recent analyses indicate this is a dramatic overstatement. There are only a few species where there is even a probable correlation – primarily the longfin smelt and American shad. The relationships are not particularly strong, especially in the range of X2 that we can actually manage.

“For most species, higher flows affect survival and abundance in multiple ways, by increasing habitat area, increasing food supply, and facilitating transport within the estuary.”

In this section, it first discusses correlations, then talks about a mechanistic relationship without scientific support. It is improper and unscientific to make that leap without further evidence. In most cases, we don’t really understand the relationship between X2 and abundance. One of the foremost experts on the subject, Dr. Wim Kimmerer is quite insistent about this. Moreover, since we only have a correlation, we really can’t ascribe benefits to X2 outflow directly. The benefit could be caused by Delta inflow, or it could be the impact of higher outflow in the dilution of pollution. Or, furthermore, it could be greater inundation of floodplains. In each of these cases, the benefits are not caused by outflow per se, but by something else. If the benefit is inflow, then the water may be available to export. If the benefit is dilution of pollution, the solution is source control, not more dilution.

“Increasing spring inflows and outflows, in particular, will increase the value of floodplain and open water habitats in the Delta, as well as upstream riverine habitats.”

This is potentially the case. However, simply increasing inflow by an unspecified quantity will not automatically increase floodplain habitat. That requires engineering. Allocating more water for flows in the spring would have repercussions for flows in the fall. There are trade-offs that need to be assessed before such conclusive statements should be made.

“Higher fall outflows should follow wet springs and lower fall outflows should follow dry springs. In critically dry years (about one year in ten) new flow requirements should result in salinity intrusions to the Delta and improved carryover storage in upstream reservoirs.”

We are unaware of any scientific analysis that substantiates the assumed merits of this proposed objective. It would make sense to not consider this immediately implementable and if pursued should await construction of new facilities to allow for optimal management under the “wet-period diversion” construct.

“By 2012, the SWRCB should adopt new requirements to increase spring outflow (in all but the wettest years) and reintroduce fall outflow variability. With input from the CDEW Plan and other sources, the Board should revise the Bay-Delta Water Quality Control Plan to include these spring and fall outflow objectives by 2012, and revise water rights permit terms and conditions to ensure attainment of the objectives by 2015. In the spring, the requirements should provide a minimum of 10% increase of unimpaired runoff in most years, with highest percentage increases in drier years. Wet years generally will require no increase. This allows greater water supply diversions during wet spring periods, in keeping with the co-equal values.”

We interpret this to mean that at least 10% of unimpaired runoff should be added to outflow in the spring of all but the wettest years. This is an enormous volume of water. Using the DWR’s Central Valley Unimpaired Flow¹, average runoff in February through May is 16.8 MAF. Adding the month of June, the 5-month average would swell by over 2.6 MAF to over 19 MAF (10% of this value is 1.9 MAF). This recommendation would result in dedicating an additional 2 MAF in the spring would be dedicated to outflow. Factoring out the wettest years, this appears to be another 1 MAF or more of water lost to consumptive use, on average, on top of what has already been reallocated over the last decade and a half. The value created is highly questionable for speculative and relatively small benefits to two or three species which have a supposed X2 correlation. The biological benefit is minor even if one accepts there is a causal relationship. Where this flow comes from is anyone’s guess, but under the water rights system as currently practiced, many high value users would be wiped out altogether. Additionally, reducing the usage of existing storage would certainly have impacts on power production, temperature control capability in streams and reservoirs cold water pool volumes that could be significantly negative for a variety of environmental concerns. Recommending the SWRCB *consider* these parameters in their Bay-Delta water quality control plan process is one thing, telling them they should *adopt* them is quite another, and without merit.

“In the fall following below normal, above normal, and wet years, the requirements should provide two months between August and November with Delta outflows of 12,000 to 18,000 cubic feet per second. (Inflow from the Sacramento River currently is higher than the unimpaired flow in the summer and fall in order to convey water supply south across the Delta to the export pumps, but those flows are not realized as Delta outflow.)”

Outflow of 12-18 kcfs is in the range of what is currently required in the spring, but fall unimpaired flow cannot support such a prescribed outflow between August and November. The additional water costs would be about 800 – 1,600 TAF per year to meet the asserted target. The only scientific basis for this objective seems to be that conditions like this occurred in the 90’s (a period in which three of the years had historic inflows) and the fish appeared to be doing better then. Note that the average August - November computed Delta Unimpaired Inflow has exceeded 18 kcfs only 7 times in the period from 1921 to 2003. The average is 11.5 kcfs and the median is 10.4 kcfs. In short, in recorded history nature never provided the frequency of flow volumes proposed. Thus, this target could only be met by ending all export and upstream diversions in these months and supplementing flows out of storage (assuming there’s any water

¹ California Central Valley Unimpaired Flow Data, (October 1920-September 2003) Fourth Edition, Department of Water Resources, 2006.

left that hasn't been previously spilled for this purpose) during all but the wettest years. In short, we would be turning over the function of upstream reservoirs to ensure a flow rarely seen under natural conditions, for a dubious ecosystem "benefit" but definitely resulting in a catastrophic impact on water supplies.

" The SWRCB should revise its Vernalis flow objectives, and the export criteria for the Central Valley Project (CVP) and the State Water Project (SWP), to provide for net positive (i.e. downstream) San Joaquin River flows by 2012, and revise water rights permits terms and conditions to ensure attainment of the new requirements by 2015. "

This is an additional new proposal that has the potential for significant adverse water supply and water quality impacts. In particular, specifying positive San Joaquin River flows in the fall will likely result in significant water quality impacts in the Central Delta and make it difficult to meet existing M&I water quality standards. As with other numeric proposals for Strategy 7, the water supply and water quality impacts of this need to be considered by the SWRCB and evaluated along with the potential biological benefits.

"Beginning immediately, the SWRCB should mandate the improvement of Delta water quality, especially on the San Joaquin River, through increased base flows and pulse flows"

The SWRCB has opened hearings on this issue and flow objectives for the river should be adopted after objective information, subject to cross examination, has been received and assessed by the Board. Prior to adoption, the Board should assure that both existing flows for environmental and other purposes are protected against illegal diversion in the Delta.

Ultimately, the "recommendations" to the SWRCB with respect to specific flow criteria are completely inappropriate and in their detail assume a level of understanding and certainty that is wholly absent. All of this should be left to the SWRCB water quality control plan process, slated to begin in late 2010.

Page 52 (Strategy 8):

An objective to eliminate non-native game fish that are predators to native fisheries (e.g., striped bass) needs to be added to this strategy.

Page 55 (Strategy 9):

Strategy 9 is broadly satisfied by the BDCP, and the Plan should say so. While the BDCP doesn't cover all of Delta Vision's needs, it does address project operations and related activities. The BDCP is "the plan" for project operations into the future and should be built upon, not dismissed or ignored.

Page 58. (Program Element related to high-priority habitat improvements)

Specific projects are listed, especially Sutter Island, that could have significant effects on other Delta values. It is inappropriate to specify projects, such as Sutter Island restoration, that have not been evaluated, are not part of current restoration planning, and may have major impacts on existing land uses.

Page 63 (Strategies 12 and 13)

We believe DWR should begin immediately to proactively strengthen the Middle River emergency "Pathway" levees. These improvements will reduce the extent of levee slumping and, in turn, reduce the time required to restore water supplies through a temporary isolated conveyance corridor in the south Delta. These improvements will reduce the ultimate demands and competition for stockpiled materials.

Therefore, we suggest the following bulleted language be added to both Strategies 12 and 13: Immediately set a high priority for short-term levee designs and emergency improvements along a Middle River pathway required to restore water supplies following a large seismic event. These improvements shall be designed to reduce the extent of levee slumping and, in turn, reduce the time required to restore water supplies through a temporary conveyance corridor in the south Delta.

Page 76-77 (California Water Utility Discussion):

We applaud the endorsement of a California Water Utility and the functions and responsibilities as described. We remain confused, however, as to how an entity that controls (at least initially) the State Water Project, which only manages a fraction of overall Delta flows, can manage all the water flows into and out of the estuary as implied by this section. This section needs further clarification as we see no mechanism for controlling non-SWP or CVP flows. Also, there is no need for the Legislature to create the Delta Operations Team, it may be done now by the agencies.

Page 80:

Inclusion of bond language seems out of place and superfluous.

Page 82:

We appreciate the description of the BDCP as something to be linked to, but more than that it should be incorporated as practically an "early implementation" component of the overall Delta Vision.

Page 86.

The proposal for citizen suit provisions to be included in CDEW enabling legislation is premature. Inclusion of such provisions has the potential for significantly complicating, probably fatally, an already daunting planning and implementation process.

Page 89:

The additional fee for exporters remains in the document without any analysis or justification. Unless it can be justified through its use as providing and equal or greater economic benefit to those on whom it is imposed it should be removed at this time.

Page 91 (Strategy 18):

Compliance of all diversions with applicable laws is something we strongly support and believe the SWRCB should be provided the necessary resources to carry out its enforcement responsibilities, along with shifting activities not consistent with this focus (e.g. conservation,

recycling) from the SWRCB and to DWR. The Plan echoes this perspective and we support it. Requirements to monitor return flows in and tributary to the Delta should be added.

We appreciate the opportunity to comment on this third staff draft Strategic Plan and pledge our participation in finalizing the Plan.

Sincerely,



Thomas W. Birmingham, General Manager
Westlands Water District



James Beck, General Manager
Kern County Water Agency



Daniel Nelson, Executive Director
San Luis & Delta-Mendota Water Authority



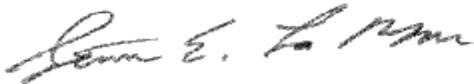
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