

September 30, 2008

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

Re: Business Water Caucus Comments on Fourth Draft Strategic Plan

Dear Chairman Isenberg:

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

Summary

This fourth draft is greatly improved over the third draft plan. The physical changes to the Delta system recommended remain a vital step forward for the State. However, we remain concerned that overly-specific and weakly supported prescriptions detailed in Volume II threaten to undermine execution and progress on the Vision as this process moves forward. We fear these flaws will be exploited by those who oppose the broad and necessary themes of change the Vision supports as reason to paint the Vision process as a failure which should be discarded.

The Task Force's final Strategic Plan in Volume I needs to refocus and emphasize the broad physical systemic changes necessary to achieve its two co-equal goals, pare away language redundant to the December's Vision report and recast the specific actions in Volume II as policy objectives with a delegated plan for evaluation and implementation, especially where specific analyses of the actions are lacking and implications are not well understood. The final Strategic Plan should then use the governance structure to spur implementation of Vision actions, recommend and assign specific responsibilities and accountability for those actions, for which the proposed Delta Ecosystem and Water Council would provide oversight and direction.

Focus on Necessary, Fundamental Systemic Changes.

Volume I of the Strategic Plan should focus on the following key changes necessary to achieve the two co-equal goals:

- Revise conveyance of export water supply to reduce conflict between reliable water supplies, direct and indirect impacts on fisheries, to allow for a return to more natural flow patterns, habitat types and distribution, and to greatly reduce seismic and flood threats to critical water supply.
- Pursue restoration of natural Delta habitat types and ecosystem functions that support native species and flow regimes necessary for their productivity, consistent with water supply need.
- Invest in new groundwater and surface storage where it supports ecosystem functions and/or improves water supply and reliability.

- Invest in a strategic levee system recognizing the variability of values protected, the threat of sea level rise, future land uses and that the Delta must cease to be used as the major conveyance pathway for California's water.

Pursuit of these key changes can be done in the context of valuing “the Delta as a place” whose unique physical, social and economic geography can be largely retained while recognizing that substantive changes in land use are coming and must be managed to retain these values while accomplishing other imperatives. If “the Delta as a place” is elevated to a co-equal status with water supply reliability and ecosystem restoration as a part of sustainable management of the Delta, it must include recognition that the Delta is dynamic and subject to rapid, irreversible and manifold changes. It must not become pretext for maintenance of the status quo or, as the Plan states, an unsustainable “fortress Delta”. To this end, rewording Goal 2 to “Promote the California Delta as a unique and valued place”, rather than “Protect” better conveys that the status quo is untenable.

Volume II's Specific Actions should be recast as Policy Objectives.

Many of the actions listed within the strategies in Volume II, while well intentioned, remain ill-conceived, unanalyzed, unsubstantiated, and in some instances conflicting. The Plan delves into detail beyond that necessary to fulfill the Task Force's mandate. It is not that the Task Force shouldn't offer policy recommendations in these areas. It should. However, the current Plan lacks a realistic, practical means of converting its policy desires into achievable actions. Specific action recommendations must be analyzed for their implications before adoption and potential implementation.

Use the governance structure to spur implementation of the Vision.

A supportable means of achieving the intent of the strategies in Volume II would be to align the policy objectives sought in the strategies and use the governance structure to create a defensible, analytically-based suite of actions that achieve the policy objectives, and assign responsibility for further development and implementation. These policy objectives should complement the major changes designed to meet the two co-equal goals.

Three examples are provided here as suggestion:

- (1) Strategy 2.1 could recast the current language from: “*Utilize State and Federal special designation to reinforce the value and uniqueness of the Delta*”; to: The Resources agency should analyze and recommend options to provide special designation to the Delta region to preserve unique social, economic and landscape values and provide a preferred recommendation to the California Delta Ecosystem and Water (CDEW) Council by October 2009.
- (2) Strategy 3.4 could be recast from: “*Restore Delta flows and channels to support a healthy Delta estuary*”; to: In collaboration with the Department of Fish and Game and interested parties, the State Water Resources Control Board (SWRCB) should develop flow objectives for the Delta to improve habitat conditions for important fishery resources while balancing other beneficial use objectives. A report on work plan, schedule and resources necessary to develop and adopt these objectives shall be made to the CDEW Council by December, 2009.

- (3) Strategy 4.1 could be recast from: “*Reduce urban, residential, industrial and agricultural water demand through improved water use efficiency and other means*”; to: The Department of Water Resources, in cooperation with the SWRCB, should develop a specific plan to achieve the optimum level of water conservation, consistent with integrated water management principles and real water savings that further benefit beneficial use of water or can reduce environmental stress. This plan shall be submitted by July, 2010 and reviewed for consistency with the Delta Vision Strategic Plan before the CDEW Council.

Utilizing this approach to strategic plan implementation, more rapid and effective progress can be made on the policy objectives the Task Force seems to desire. This process would also substitute for the creation of a CDEW plan, delegating specific resource area responsibilities to agencies with the primary expertise, yet assuring that the objectives will be pursued in a systematic and defensible manner. The California Delta and Ecosystem Council’s role would be to oversee implementation of the Strategic Plan, assess performance of implementation by line agencies and recommend modifications going forward.

Volume I (Specific Comments)

Section A context (seven goals identified for the strategic plan).

Most of these goals are paraphrased or reiterated as the twelve goals adopted by the Task Force in their Vision document. It is implied, but not clear in this section whether these seven goals supplant the original 12 goals and that strategies are developed to relate to the seven new goals only. The discussion explaining this on page 16 should be brought forward.

Section A also overstates the lack of progress on environmental and water policy issues over the last thirty years. It is clear that the Delta is in crisis. However, it is incorrect to state that complete deadlock has or does prevail, or local agencies have simply pursued their own solutions. Rather, many of these agencies collaborate together, across regions to address environmental and water supply problems. Many proactive voluntary agreements have advanced water management and environmental protection. Examples of such agreements include the San Joaquin River Agreement (VAMP), Sacramento Valley Settlement Agreement, San Joaquin River Settlement Agreement, and numerous interregional water banking arrangements (e.g.: Arvin-Edison Water Storage District, Kern Delta Water District, and Semitropic Water Storage District Water Management Programs – just to name a few.) The SWRCB has exercised its public trust authority and revised the Bay-Delta water quality objectives and conditioned water rights permits resulting in hundreds of thousands of acre-feet of new flow capacity to the Bay-Delta. The federal Central Valley Project (CVP) Improvement Act dramatically changed the operating priorities of the CVP, which greatly increased water supplies for waterfowl refuges, provided nearly a million acre feet of environmental flow capacity, established steady funding for ecosystem restoration and created opportunities to transfer water out of the Project in ways not previously available. Despite these innovative actions, the State has not dealt forthrightly with fundamental Delta problems and the recent pelagic organism decline, and regulatory and judicial responses to that have only compounded fundamental conflicts.

We also recommend the tone of this section become more neutral and dispassionate. The use of pejoratives such as “water buffalos” is unnecessary and connotes bias or enmity. Discussing water crises elsewhere is not particularly useful unless specific lessons can be applied to the

specific local conditions. Overall, the message of and the rationale for change in this section is undisputed, but the manner that it is delivered undermines the message.

A strategic plan should be spare:

Ideally, a strategic plan identifies and defines the problems to be solved, sets the policy objectives to resolve those problems, and identifies and assigns the strategies to achieve the objectives. This strategic plan deviates from this path with needless detail, resulting in an unfocused, often contradictory document, which can be too easily dismissed by those who prefer the status quo.

Page 5 (the quote in the box):

“...with little evidence of successful conservation at a statewide scale.”

This statement is simply incorrect. Over the last four decades, the amount of water used on California farms is relatively consistent while crop tonnage has increased more than 85 percent during the same period.¹ This is a result of on-farm efficiency improvements which include water conservation. In cities across California, water demands have been relatively flat for nearly 20 years despite the state population increase of about 400,000 persons per year. What is true is that there are more potential conservation measures to be achieved and that per capita consumption is again rising².

Page 7 (Static water supply discussion):

The discussion of static water supply implies that we can do little to better manage the endowment that the state possesses. While there is a fixed amount of water available, there exist huge, unmanaged flows almost annually within the state. During wet years with large precipitation events, more water flows to the Delta in a week than all of urban Southern California can utilize in one year, approximately 5 million acre-feet (maf). There remain large opportunities to alter how and when water is diverted, providing additional water supply and lowering the impacts of those diversions. The document gets it correct, beginning at line 12 indicating we need parts of every tactic available to resolve current Delta conflicts. Mandatory conservation as discussed in the Plan is inappropriate and misplaced. Conservation requirements need to be approached carefully, and implemented only where real value in terms of additional beneficial use of water, reduced supply gaps or reduced environmental stress is produced. A one-size fits all mandatory program that does not recognize basin-wide efficiency issues and does not result in net benefits would be counterproductive at best as well as a likely lightning rod for opposition.

Page 7 (paragraph six, line 22):

Here it is stated that the Task Force prefers a dual conveyance system, with a clear legal limit to total water export placed in law. While this may be a true reflection of the Task Force's view, and (as a practical matter) legal limits are already the reality due to temporal, capacity and operational limitations enforced under permits, we are concerned that those limits be reached

¹ Ag Water Management Council, 2008

² Because per capita consumption is rising does not mean widespread conservation is not occurring. Factors such as increased affluence, fewer persons per household and development in warmer and dryer parts of the state are countervailing factors.

objectively; balancing the state's need for water with environmental goals, and those limits not being arbitrarily frozen, regardless of change in the environment or water needs. If conveyance improvements and actions on other stress factors improve environmental conditions sufficiently, water export restrictions or other withdrawals for consumptive purposes should be able to be modified accordingly.

Page 7 (line 24):

This line indicates that a secure water future will come from regional actions and water conservation and not from state projects or facilities. Prior to Judge Wanger's ruling this might have been true. With the ruling and other efforts to restrict exports due to alleged affects on Delta species, it is absolutely untrue. If Delta conveyance is not modified to remove those conflicts and restore prior reliability to the export system, billions of dollars invested in regional self sufficiency efforts (local storage and recycling) will be lost and supply reliability prospects for the majority of the state's population will be an illusion.

The final paragraph of page 7, however, sets the right tone for moving forward and how effective water rights law administration can help. We agree that "effective use of California's water rights laws, which includes reasonable use and public trust principles" is the best mechanism to resolve conflicts when they arise.

Page 8 (paragraph 1, first sentence):

Here as it is stated that Californian's "*really apply water rights laws...*", conveys a message that the SWRCB and court system have only been pretending to follow the law. The issue here is adequate resources needed to evaluate issues expeditiously and systematically, and the profound difficulty of decision making in the context of limited resources under important and competing demands with imperfect knowledge and tools in a world where due process is an important value and the rule of law.

Sections B and C:

These sections do a generally good job of framing the problem statement for the Delta and the state.

Page 15 (paragraph 3):

This paragraph should be corrected to indicate there is no historical record of levee failure in the Delta from seismic events. It should be noted that on a geologic scale, there's been only a short time that subsided islands and inadequate levees have existed.

Page 15 (line 20):

It is correctly noted that "*Almost 200 non-native species exist in the Delta, and they constitute 95 percent or more of the biomass.*" This is a sobering statistic which the Task Force should further emphasize and put in context. Biologically, the Delta has been irrevocably altered. We only have broad notions of how to restore systems and processes to resemble conditions that existed prior to these invasions. We know less about how the biological system will respond when we make these changes, but we must begin that process to learn more.

The Delta ecosystem, in response to societally imposed changes and re-engineering, invasive species, and climate change is seeking a new equilibrium, that will be quite different from the past and changes we make to its inputs will create new trajectories for its inhabitants. We will be fortunate if we are able to understand enough of the causes and effects to manage those changes. Interests that cite any one factor as being key in restoring the Delta ecosystem (flow being the most often cited) should be viewed with great skepticism and for other motives. Actions that cannot be gauged with any certainty as to their environmental effectiveness, but can be surely understood in their adverse impacts to the state's economy, should be approached with great caution. Experimentation, evaluation and adaptive management are the tools for use in this situation. Section E "Act While Learning" correctly recognizes this situation.

Section D (Introduction):

Strategies for a Better Future, is well done. The third paragraph on how the "*Delta as a Place*" can be treated as a third foundational leg is well done. To this end, as stated above, we believe the wording in Goal #2 should read "Promote" not "*Protect*" in order to recognize the 'static Delta' myth and that the Delta is dynamic and subject to rapid, irreversible and manifold change.

Page 19 (Strategy 3.4):

We recommend the language read "Provide" Delta flows and channels to support a healthy Delta estuary, versus "*restore*" which connotes a return to pre-development conditions.

Page 20 (line 13):

We agree analysis of flow objectives relative to their impacts on water supply reliability is fundamental. Because the currently included flow criteria recommendations in the Plan have not been subject to such analyses, it would be inconsistent to keep them at the level of detail described. Instead, we reiterate our recommendation to utilize narrative goals.

Page 20 (Strategy 4.2):

Strategy 4.2 reads "*Increase regional self-sufficiency through diversifying water supply portfolios, while not impacting flows to the Delta*" illustrates how one-size-fits all conservation measures would do just what this objective seeks to avoid: impact flows to the Delta. Water conservation in many areas of the Central Valley would lower return flows to the Delta. This has already happened dramatically in the San Joaquin Valley, where increased micro-irrigation use, lining of canals, banning of tailwater runoff and recirculation of tailwater has resulted in less return flow to the Delta, the predominant source of flow in the San Joaquin River in summer and fall. These measures have been taken largely to improve water quality and cope with chronic water shortage, but they also result in less water reaching the Delta from return flows. Conserved water often has only resulted in less unmet demand, or in other areas, has allowed new use and reuse opportunities via groundwater recharge and reservoir reoperations. It is not possible in many instances to increase regional self sufficiency without impacting flows to the Delta in some manner. Rather than a prohibition against effects, the balance of impacts, positive and negative, must be assessed and addressed.

Page 23 (Strategies 6.1, 6.2, and 6.3) We strongly endorse these strategies that align levee investments with the resources they protect, ensure appropriate land uses in the Delta and implement actions to improve the level of protection against catastrophic levee failure.

Page 24 (lines 12-15) the statement "...water delivery systems must now comply with species protection laws" needs to be revised so that it does not imply that this is somehow new or in dispute. While the method and magnitude of actions to gain compliance are often at issue, the legal requirement to comply has not been, and there has not been an absence of compliance as implied..

Page 24 (Goal 7 – Governance). We continue to support the overall structure of the governance proposal but reiterate the need to limit the California Delta and Ecosystem Council to an oversight role, using the strategic plan to delegate specific and direct responsibility to implementing agencies, eliminating the cost and delay from yet another three-year planning process as envisioned by the CDEW plan.

Section E. (Act While Learning) is a strong endorsement of using the Strategic Plan to direct agency action and integration now, rather than tie it up in a three year planning process under the CDEW proposal.

Volume 2 Strategy Description Comments

Overall, we find the strategies in Volume II to be overly prescriptive for a strategic plan and, more importantly, they often lack assignment of responsibility, clear linkage to accomplishment of the seven goals in Volume I. Instead, they link to the goals from the Vision document.

Strategies 3.1-3.4. The Task Force and staff have done valuable work advancing the substance of and rationale for restoration of physical habitat in the Delta. Strategy 3.4 regarding restoration of flows is improved from the third draft plan but we remain concerned that the prescriptions there are not adequately supported nor the implications of those prescriptions understood at a level that justifies their inclusion with such specificity. We appreciate the recognition in the text at line 11 on page 12 that there are ways to modify habitat that achieve some of the objectives otherwise sought through flow management. We also appreciate the recognition of market mechanisms as tools to achieve justified flow patterns. Language directing that the SWRCB "should adopt or revise" certain new requirements should be changed to "should consider", to avoid implying prejudgment.

We appreciate and support the numerous statements in this iteration of the Plan that explicitly state the intent to build upon and integrate products of other processes currently underway and previously completed where appropriate.

Strategy 4.2 pertaining to recycling and desalination goes well beyond practicality. To simply throw out the addition of .5 maf to the 1 maf goal which is already behind schedule and the notion of "tripling" desalination efforts exhibits a disregard for the costs and trade-offs associated with the requisite investments, let alone the hurdles of public and environmental acceptance. We support aggressive efforts related to both recycling and desalination, but again, the Plan needs to avoid specific prescriptions using ungrounded numeric goals.

Strategy 4.3. This set of actions is emblematic of how the Strategic Plan loses focus and tries to do things that are inappropriate in such a document. The Strategy itself is flawed. It is unrealistic to expect agencies to limit local water resource reliability actions only to those that don't impact flows to the Delta. For example, if a water district upstream of the Delta found that its water transmission systems and farmers' agricultural practices resulted in large leakage, spill and overflows, would the Task Force say, "yes, keep your leaky, badly managed system as it is because to do otherwise would change the pattern of the water lost from your system that now reaches the Delta?" Would it not be preferable to operate an efficient system that increased their self sufficiency and allowed more water to remain in storage for use in drought conditions?

The strategic plan should stop at the point of calling for increased self sufficiency and diversified water portfolios and delegate the pursuit of that to the most knowledgeable agencies: DWR and water delivery entities throughout the state. The action recommendations in this version of the plan come off as a shot-gun, grab-bag list of unintegrated actions which provide no real help to the agencies that have to plan and develop water supplies.

Strategy 5.1 (Conveyance and Storage) The language in this strategy has improved from Draft # 3. Paragraph six at line 34, page 37, is unclear in how the statement in the last sentence is justified by the prior sentences.

This strategy also calls for shifting to groundwater in areas of upstream surface diversions. There must be recognition that in some upstream areas (as with other parts of the state) there may not be a capability to shift to groundwater as it may not exist or may not be suitable from a water quality standpoint.

We also strongly encourage the Task Force to reinstate language deleted from Draft # 3 pertaining to the criticality of the Task Force's recommendations regarding investment in new Delta conveyance, to wit: "We recommend the linchpin to managing the Delta water supply and ecosystem functions as co-equal objectives will be construction of a new canal isolated from the Delta's natural waterways....The size, location and operations of both a new canal and modifications to existing channels will require additional analyses, but new conveyance [facilities] must be constructed."

Furthermore, the statement in Draft # 3 that, "The capacity of an isolated portion of a dual conveyance system must recognize and accommodate risks of failure to the through-Delta portion from seismic events and sea-level rise" should also be put back in the document.

Page 38. Language relative to balancing diversion quantities and ecosystem flow objectives is helpful. Room should be left to consider that diversion quantities could be increased in some years if ecosystem recovery goals are met or it's found that other stressors bear primary responsibility for ecosystem health.

Page 41. At paragraph (b.) we concur that a flood bypass along the San Joaquin River is a key component both to flood protection but also to ecosystem restoration needs.

Strategy 7.1 (Governance). In addition to our comments above, we believe language from prior drafts regarding analysis of remaking DWR as a statewide water resource planning entity and separating its water project operation functions into a utility entity should be reinstated. At a minimum, the plan should acknowledge that DWR is pursuing this review, independent of Task Force recommendation.

Strategy 7.2 (CDEW Plan). As previously noted, this aspect of the plan is unnecessary and will be a drain on resources and attention to action that is long overdue. The strategic plan should be restructured to have the Delta and Ecosystem Water Council oversee implementation using the completed strategic plan as their guiding document.

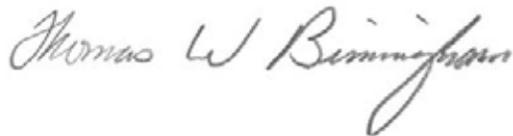
Strategy 7.3 (Finance). At line 4 on page 66 it is stated: “5. No public payment for water required for ecosystem revitalization is anticipated in this finance plan; the legal and fiscal arguments against such inclusion are persuasive.” While the Task Force may find these (unstated) fiscal and legal arguments persuasive, there is a practical reason for leaving an option for public money available for this purpose. Water rights long-ago granted to entities within the state under prevailing policy were done so on the basis of good faith that the grantee would be able to develop those rights for economic purposes. If such rights were reduced, eliminated or otherwise infringed upon, the economic damage from this would surely become an issue, and compensation for this would certainly be claimed. There is nothing inherently wrong with having public money pay for what amounts to changes in public policy when private entities fairly relying on past public decisions are disadvantaged in new ones.

Page 65, strategy 7.3, lines 32-33 still include the two fees for exporters, for which there remains a lack of justification. Inasmuch as export interests will be paying for new conveyance, which is widely recognized as a necessary conservation measure for the fish as well, we are unaware of a justification that would have export water users pay two sets of fees in addition.

Principle # 4 in this section indicates that if funds are diverted from the CDEW Council that “no water should be conveyed through the Delta for the State Water Project (SWP)”. This would constitute a breach of current supply contracts and would expose the state to economic damages. Further, it is a perverse “don’t do this or I’ll shoot my dog” response to a serious issue. A better means to protect the funding would be contractual arrangements which could not be abrogated by legislative fiat.

We appreciate the Task Force’s diligent and thoughtful approach to their charge. We also appreciate its openness and responsiveness to constructive criticism. We look forward to a final strategic plan and it is our hope that this effort helps spur continued leadership on the change necessary to manage Delta issues.

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



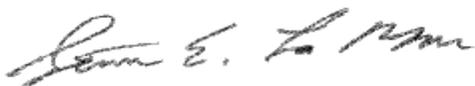
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