



CVCWA Central Valley Clean Water Association

Representing Over Sixty Wastewater Agencies

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ED CROUSE – VICE CHAIR, RANCHO MURIETA CSD
HUMBERTO MOLINA – TREASURER, MERCED

September 1, 2008

The Honorable Philip L. Isenberg
Chairman of the Governor's Delta Vision
Blue Ribbon Task Force
650 Capitol Mall, Fifth Floor
Sacramento, CA 95814

SUBJECT: Third Staff Draft of the Delta Vision Strategic Plan (August 14, 2008)

Dear Mr. Isenberg:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to comment on the Third Staff Draft of the Delta Vision Strategic Plan (Strategic Plan), released for public review and comment on August 14, 2008. CVCWA's comments provided here are in addition to and supplement previous comments provided by CVCWA on earlier versions of the Strategic Plan.

As indicated in previous comments, CVCWA represents the interests of more than 60 wastewater agencies in the Central Valley in regulatory matters related to water quality and the environment. Included in that membership are a number of wastewater agencies that will be directly or indirectly impacted by the actions identified in the Strategic Plan. On behalf of its member agencies, CVCWA provides the following general comments on portions of the Strategic Plan.

As an initial matter, CVCWA is concerned that the co-equal values expressed in the Strategic Plan are directly contrary to each other, and more importantly, fail to comply with the Legislature's expressed intent with regards to maintaining water quality in California, and the Delta. The Porter-Cologne Water Quality Control Act (Porter-Cologne) specifically provides that "activities and factors which may affect the quality of waters of the state shall be regulated to attain the highest water quality which is *reasonable, considering all demands being made and to be made on those waters* and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (Wat. Code, §13000 emphasis added.) Thus, to the extent that the Strategic Plan attempts to address water quality issues in the Delta, which is a significant portion of the Strategic Plan, it must consider all demands and needs placed on Delta waters – not just the ecosystem and export water supplies.

Our comments are organized to follow the structure provided in the Strategic Plan.

Strategy 2 – Optimize regional self-sufficiency by increasing the diversity of local and regional water supply portfolios

CVCWA, and its member agencies all support the need to increase the use of recycled water in California. However, for this to be a feasible strategy, the state must address and remove many of the current impediments that wastewater agencies face when they try to obtain funding to build upgraded treatment facilities, improve infrastructure facilities, and obtain permits to authorize recycled water use. In reality, there is limited funding available for such improvements and the cost of new facilities is usually not economically feasible for the residents of small communities to bear. In fact, several small rural communities have been unable to upgrade facilities because residents have voted against rate increases to pay for new facilities. As a result, small communities are unable to meet stringent permit requirements, and are unable to pursue recycled water use alternatives. Before mandating specific goals regarding recycled water use, the state must first provide sufficient funding to make such goals a reality. Otherwise, it is a goal that is unable to be fulfilled.

Strategy 5 – Improve water quality for drinking water, agriculture, and the ecosystem

This strategy would require the State and Regional Water Boards to develop water quality objectives that are “fully” protective of beneficial uses. CVCWA is concerned that the Strategic Plan intends to apply a legal standard that contradicts the state’s water quality laws and case law. The legal standard for the protection of beneficial uses is “reasonable” protection, not “full” protection. (See *United States v. State Water Resources Control Board* (1986) 182 Cal.App.3d 82, 121-122, [“The Board’s paramount duty was to provide ‘reasonable protection’ to beneficial uses, considering all demands made upon the water.”]) In general, CVCWA supports the concept of the State and Regional Water Boards evaluating and developing water quality objectives where necessary and appropriate. However, when doing so, the Water Boards must develop such objectives in a manner that is consistent with state law, which requires the “reasonable” protection of beneficial uses. We recommend that the Strategic Plan be revised to be consistent with the mandates of state law.

Further, this strategy would require the Central Valley Regional Water Quality Control Board (Regional Water Board) to complete the source control elements of the Water Board’s strategic plan and would encourage the Legislature to increase funding for staff resources for the State and Regional Water Boards by adding 30 to 40 additional positions. (Plan at 44-45.) The need for such additional resources may be premature until the State and Regional Water Boards can clearly determine what water quality objectives are necessary and appropriate. Once such a determination is made, then the State and Regional Water Boards should identify what control actions are necessary to achieve compliance with the objectives. As drafted, we are concerned that all actions would be conducted in parallel instead of sequentially. For the Strategic Plan to be effective and to allocate limited resources judiciously, we recommend that the State and Regional Water Boards receive additional funding to adopt appropriate water quality objectives, and then determine what funding may be required to implement applicable implementation programs.

Relative to this strategy, are the Report Card indicators and associated performance measures identified in Table 2 at page 26 of the Strategic Plan. In particular, the Strategic Plan

proposes a performance measure based on ambient levels of total organic carbon and bromide being 3 mg/L and 50 ug/L, respectively. The proposed concentration levels have no bases in law, as there are no legally adopted water quality objectives for total organic carbon or bromide. Until such objectives are established and adopted in a manner that conforms to applicable state laws, it is premature to use such values as performance measures.

Strategy 8 – Reduce or eliminate ecosystem stressors to below critical thresholds

CVCWA is concerned that Strategy 8 may contain specific actions that are contradictory. For example, the Strategic Plan encourages the use of treatment wetland systems while concurrently recommending adoption and implementation of Mercury TMDLs for both organic and inorganic forms of mercury. There is a substantial body of evidence that suggests wetlands are a primary source of methylmercury in the environment. Thus, the use of treatment wetlands may in fact create additional methylmercury.

Also, the Strategy implies that there is widespread violation of regulatory requirements resulting in significant discharges of contaminants into Delta waters and upstream watersheds. However, the Strategy provides no evidence to support this inflammatory and largely inaccurate statement. In fact, most municipal wastewater agencies in the Central Valley substantially comply with restrictive and stringent permit limitations that in many cases far exceed minimum treatment standards established by the United States Environmental Protection Agency (USEPA). To suggest that there are significant unaddressed contaminant issues in the Delta is inappropriate.

Finally, the Strategy (p. 53) also refers to a “soup” of contaminants but fails to provide any explanation as to what is meant by this statement. We recommend that the Strategy include sufficient detail on this issue and others to allow stakeholders the opportunity to effectively comment on the intent of the Strategic Plan.

Strategy 15 – Create a new governance system to manage the co-equal values and other state interests in the Delta

At this point in time, it is difficult for CVCWA to express specific comments with the proposal to create a California Delta Ecosystem and Water Council (CDEW Council), as well as the implementation of legally binding California Delta Ecosystem and Water Plan (CDEW Plan), because the Strategic Plan fails to contain sufficient details that explain the format and purpose of the CDEW Council and Plan. In general, CVCWA is concerned that the proposal would create a super bureaucracy with duplicative authority and functions of other existing agencies, such as the State Water Resources Control Board and applicable Regional Water Quality Control Boards (Water Boards). More specifically, CVCWA must express its objection if the proposal would remove water quality authority from the Water Boards. Issues related to water quality and wastewater treatment are complex, technical and unique. The Water Boards, having dealt with such issues for more than three decades, are best suited to determine the potential impact that treated wastewater may have on the Delta ecosystem. Such decisions and determinations should not be removed from those with the expertise and frameworks in place for decision-making.

The Strategic plan recommends empanelment of a permanent Public Advisory Panel (PAG) to advise and make formal recommendations to the CDEW Council. CVCWA supports

stakeholder participation such as the PAG. However, to the extent that the CDEW Council or the PAG may make decisions or recommendations related to water quality, CVCWA believes it is critical that the PAG include members representing wastewater treatment and stormwater agencies. These two categories of stakeholders should be listed along with other stakeholders (i.e. water users, environmental groups, local Delta communities, agriculture, business, and environmental justice advocates) if specific agencies are listed that must be represented.

With regard to environmental justice concerns, CVCWA recommends that the Strategic Plan be amended to include an additional criterion addressing increased costs on disadvantaged and minority communities for wastewater treatment. If implemented as proposed, the Strategic Plan would ultimately result in increased costs for wastewater treatment agencies, and their public ratepayers. Often, it is the smaller, rural communities with minority populations that face disproportionate sewer bills for upgrades in treatment because there is not a sufficiently large population to spread out the capital and operational costs for advanced treatment. This is especially true for many of the small communities within the Delta. To ensure that such costs are considered, we recommend that the following additional environmental justice criteria be added for inclusion in the CDEW Plan:

- Changes in the cost of wastewater treatment and the impact of affordability for low-income communities or communities of color.

Strategy 16 – Create a California Delta Ecosystem and Water Plan to ensure flexibility and consistency of action among state, federal and local entities.

Strategy 16 would require the development of a “*legally binding California Delta Ecosystem and Water Plan to establish a detailed management structure for attainment of co-equal goals as well as identified land use issues in the Delta region.*” To the extent that the CDEW Plan is a water quality control plan that sets performance targets for water quality and requires the Water Board to modify other water quality control plans, the plan must be adopted in accordance with the principles and requirements set forth in the Porter-Cologne. (Wat. Code § 13000 et seq.) CVCWA recommends that the Strategic Plan be revised to clearly identify the legal principles that would apply to the development and implementation of the CDEW Plan.

CVCWA is also concerned that the remedies for inconsistent actions would override all other applicable laws and regulations for which other agencies must comply. For example, under the Strategic Plan, the State Water Board would be required to modify water quality control plans in accordance with the CDEW Plan. If the State Water Board determines that such a plan cannot be modified in a manner that is consistent with the CDEW Plan because of its legislative mandates, the CDEW Council would have the authority to issue a cease and desist order to the State Water Board. And, a citizen group could bring a lawsuit against the State Water Board for also failing to comply with the CDEW Plan. In this scenario, the State Water Board would be forced to comply with the CDEW Plan even though it may violate another law for which the State Water Board is liable.

For these reasons, CVCWA does not support the remedies proposed. CVCWA is especially concerned with the use of citizen suit provisions as a remedy. Such a provision would eventually result in chaos and multiple interpretations as to what it means to consistently comply with the CDEW Plan. Thus, we recommend that the remedies be eliminated from the Strategic Plan.

Strategy 17 – Finance the activities called for in the California Delta Ecosystem and Water (CDEW) Plan through user fees and other effective and transparent financing tools.

As commented on previously by CVCWA, the cost estimates identified the Strategic Plan focus on levee system improvements and alternative conveyance systems. The estimates fail to include any of the potential costs associated with the CDEW Plan actions that would require increased levels of wastewater treatment and the expansion of recycled water use. In order for the Task Force to truly understand the real costs associated with the proposed actions and implementation of CDEW Plan, all costs relative to new or revised water quality requirements must be included and considered.

In summary, CVCWA has identified several significant concerns with portions of the Strategic Plan that relate specifically to wastewater agencies and the treatment of wastewater. To ensure that the Strategic Plan is reasonable and workable for all stakeholders, we respectfully request that the Strategic Plan be modified as indicated above. Again, CVCWA appreciates this opportunity to comment and please be assured that we will continue to comment on the Strategic Plan as it is further developed and revised. If you have any questions, please do not hesitate to contact me at (530) 268-1338.

Sincerely,



Debbie Webster
Executive Officer, CVCWA

C: Mike Chrisman – Resource Agency
Linda Adams, CalEPA
Tam Doduc - SWRCB
Pamela Creedon – CVRWQCB
Lester Snow – Department of Water Resources
Roberta Larson - CASA