



August 1, 2008

The Honorable Phil Isenberg
Chair, Delta Vision Task Force
650 Capitol Mall
Sacramento, California 95814

VIA U.S. MAIL AND E-MAIL

Re: Comments on Second Draft Delta Vision Strategic Plan

Dear Mr. Isenberg:

The City of Folsom, City of Roseville, Sacramento Suburban Water District and San Juan Water District appreciate the opportunity to comment on the Task Force's second draft of a Delta Vision strategic plan. Each of our agencies delivers water supplies from Folsom Reservoir to meet the water needs of our respective service areas. We recognize that the Delta faces a serious crisis and are willing to work toward solutions to it. We therefore support some aspects of the July 11, 2008 draft strategic plan, but oppose others. Specifically:

- We support the Task Force's emphasis on regional self-sufficiency and believe that our American River region is one of the most self-sufficient in the State. We therefore: (1) support proposals that will help regions conjunctively manage surface and groundwater resources to meet their future needs in environmentally protective ways; and (2) oppose any uncompensated reallocations of water from our region as hindering our ability to so manage our region's resources;
- We support increased coordination of agencies' oversight of the Delta through a new Division of Delta Resources at the State Water Resources Control Board ("SWRCB") that, pursuant to the "beneficiary pays" principle, would be funded by water users with direct interests in diverting water from the Delta;
- We have serious questions about how governance of a proposed California Water Utility would relate to that Utility's management of the flood-control operations of the State Water Project ("SWP"), and eventually the Central Valley Project ("CVP"), and therefore cannot take a position on that proposed Utility;
- We support water conservation efforts and are developing new regional standards in coordination with the Regional Water Authority, but oppose any "one size fits all" conservation standard because there are important differences between water uses that return water to the Delta's tributaries and those that irretrievably convey water to other regions; and

- We cannot take a position now concerning any particular Delta conveyance proposal because any such proposal would involve specific and important policy issues, but support, in concept, cost-effective Delta conveyance solutions that would balance water supply reliability and the Delta's ecosystem needs.

Our Agencies

We collectively provide municipal water supplies to approximately 450,000 residents of the Sacramento region. To maximize our region's ability to deliver these supplies in dry years and in environmentally protective ways, we cooperate with numerous other water agencies in the Regional Water Authority and through the Water Forum Agreement. The Water Forum Agreement provides a blueprint for how our region intends to conjunctively manage our supplies to satisfy the coequal objectives of: (1) providing "a reliable and safe water supply for the region's economic health and planned development to the year 2030;" and (2) preserving "the fishery, wildlife, recreational, and aesthetic values of the Lower American River." (The Water Forum Agreement is on-line at <http://www.waterforum.org/agreement.cfm>.)

Support for Focus on Regional Self-Sufficiency

We strongly support the Task Force's, and the draft strategic plan's, focus on regional self-sufficiency as the key to ensuring that California has sufficient water supplies to meet its ever-increasing demands. Our region is self-sufficient and is working, through the Regional Water Authority, the Water Forum Agreement and other means, to ensure that we are able to continue to be so as demands increase. For example, agencies in our region – led by the City of Roseville and Sacramento Suburban Water District – are pursuing Aquifer Storage and Recovery (ASR) projects to allow us to store American River water in groundwater aquifers for use in dry seasons and dry years. We therefore wholeheartedly support the draft strategic plan's suggestion that more coordination of state policy is necessary to encourage and regulate ASR programs. (See July 11 draft strategic plan, p. 56.)¹ For several years, we have faced regulatory obstacles to injecting Department of Public Health-permitted drinking water into aquifers due to the Central Valley Regional Water Quality Control Board's ("RWQCB") concern that such drinking water might not be protective of public health. We hope that the Task Force's suggestions concerning ASR programs will assist not only our region in maximizing its self-sufficiency, but also encourage other regions to implement similar programs.

Concern About Reallocations of Water

We are concerned that some parts of the July 11 draft strategic plan will inhibit our region's self-sufficiency. In particular, we are very concerned about the following statement in the draft, and related statements in Deputy Attorney General Virginia Cahill's July 9, 2008 letter to the Task Force:

¹Unless otherwise indicated, further page references are to the July 11 draft strategic plan.

This Strategic Plan expects that water required to support and revitalize the Delta will not be purchased but will be provided within the California's [*sic*] systems of water rights and the constitutional principles of reasonable use and public trust.

(Pp. 25-26.)

As a legal matter, we strongly disagree that upstream water users such as us can be required to contribute water, without compensation, to Delta-enhancement measures without evidentiary proof that our activities contribute to the Delta's problems. (See *State of California v. Superior Court (Fogerty)* (1981) 29 Cal.3d 240, 249.) More important, we believe that attempting to implement ideas such as an involuntary reallocation of water supplies will both undermine the Task Force's important goals of ensuring that California's regions are self-sufficient and improving the Delta. We believe that proposals to limit times when water may be diverted to authorized reservoir storage (p. 39) would have similar consequences. Reallocating existing surface-water supplies from our region obviously would inhibit our ability to meet, independently and without major new surface-water facilities, the region's future demands. Similarly, the evidentiary hearings (and the inevitable subsequent litigation) that would be constitutionally required to consider whether to implement any such reallocations would be so contentious that they would consume the time, resources and effort that is required to develop solutions to in-Delta problems. In short, this proposal is based on flawed legal reasoning and would be bad policy as well.

Support for Coordinated Delta Response Under State Water Resources Control Board

We share the Task Force's concern about the lack of coordination among the agencies that have regulatory authority over the Delta. This lack of coordination directly affects our region and our agencies. The U.S. Bureau of Reclamation frequently releases water from storage in Folsom Reservoir to meet Delta water quality standards' day-to-day demands because this Reservoir is the project reservoir that is closest to the Delta. Accordingly, our water supplies from that Reservoir are subject to unforeseeable reductions due to the Delta's problems. We therefore believe that improving the structure of state and federal oversight of the Delta is a key component of any Delta solution.

We believe, however, that the most effective way to implement such an improvement would be to work within existing structures and not create a new state agency as the July 11 draft strategic plan proposes. Specifically, the SWRCB is the appropriate agency to address Delta issues because it was specifically organized to address issues where water rights and water quality intersect. (See Water Code § 174.) The SWRCB already has the ability to ensure that the terms of permits issued by federal agencies are consistent with Delta water quality standards through the SWRCB's certification authority under section 401 of the federal Clean Water Act. (See 33 U.S.C. § 1341(a).) We therefore believe that, rather than recommending the creation of a new California Delta Ecosystem and Water Council, the Task Force should recommend the creation of a new Division of Delta Resources within the SWRCB. This new division would be similar to the essentially temporary offices that the SWRCB has created while considering Delta water quality issues, but would be a permanent entity. While this new division would require

new staff and resources to operate permanently, we believe that it would be a more cost-effective – and simply effective – solution than the creation of a new agency with its attendant budget demands and resource-consuming jurisdictional disputes with existing agencies. Our experience with the regulation of ASR projects – which involves the Department of Water Resources (“DWR”), the Central Valley RWQCB and the Department of Public Health, among other agencies – suggests to us that, even where state policy encourages or requires the promotion of certain outcomes, the involvement of many agencies can slow down innovative projects’ implementation.²

Consistent with the “beneficiary pays” principle, we believe that a new Division of Delta Resources should be funded primarily by those entities that would benefit from a healthier Delta, namely Delta exporters and in-Delta water users. Given the broad acceptance of the “beneficiary pays” principle, this approach is much more likely to achieve acceptance – and therefore encourage relatively rapid implementation of Delta solutions – than the financing approach proposed by the July 11 draft strategic plan, specifically its proposed watershed-wide diversion fee (p. 27). We believe that such diversion fees would suffer the same defects as involuntary reallocations of water from Delta watershed water users unless there is an evidentiary decision that such water users contribute to the Delta’s problems.

We recognize that the SWRCB would not have authority over Delta land use decisions and ecosystem restoration programs. We believe that an augmented Delta Protection Commission would effectively address Delta land use issues and would support the creation of a new Delta Conservancy to manage Delta restoration programs. We believe that the operations of the State’s existing conservancies demonstrates that such agencies can cost-effectively implement and manage such programs.

Serious Questions About Proposed California Water Utility

In general, we believe that, ultimately, it could be a good idea to create a new California Water Utility and have that Utility, rather than DWR, operate the State Water Project (SWP) and eventually the Central Valley Project (CVP). We believe, however, that it is not possible to make any determinations about the Utility proposed in the July 11 draft strategic plan because crucial questions about how such a Utility would address flood-control issues are not discussed.

The SWP and CVP provide crucial flood-control protection to our region, which is one of the most vulnerable the United States to flooding. The July 11 draft strategic plan does not state how the proposed Utility would: (1) make flood-control operation decisions; or (2) decide how to invest in flood-control projects. We would be extremely concerned about any proposal under which entities without an institutional interest in protecting our region from floods would control the proposed Utility. In past floods, our entire region has watched nervously as DWR and the Bureau of Reclamation have operated during past floods – successfully for the most part. If the Utility were in control of the relevant facilities, but was operated by entities without an interest in our region, our region’s flood-control concerns would only be exacerbated.

²State policy encourages conjunctive use. (See, e.g., Water Code § 1011.5.)

Such anxiety also would extend to water-supply issues. The operation of the CVP's and SWP's reservoirs requires careful balancing between water-supply and flood-control needs. As the July 11 strategic plan recognizes (pp. 52-53), if a reservoir's storage is drained without an actual flood-control need, then water supplies for later consumptive and environmental use are lost. Because we rely on supplies from Folsom Reservoir, we would feel the consequences of such operations directly. We accordingly would not support allowing entities without interests in our region to control Folsom Reservoir's flood-control releases, partly because such releases could dramatically affect our water supplies.

Opposition to Any One-Size-Fits-All Water Conservation Standards

The July 11 draft strategic plan proposes, as performance targets: (1) a 20% per capita reduction in water use by 2020; (2) a greater than 30% per capita reduction by 2040; and (2) an undefined, but higher, per capita reduction by 2060 that would vary by hydrologic region. (P. 10.) We believe that the proposed variable 2060 reduction reflects the correct approach to the issue, but we oppose the specific 2020 and 2040 targets (and therefore the 2060 target to the extent it incorporates the 2020 and 2040 targets) because those targets do not account for the significant differences in the way that water uses affect streamflows in the State's different regions.

The key fact is that, in some regions, consumptive water uses return water to local surface streams and groundwater aquifers, while other diversions irretrievably remove water from one region for the benefit of another. In our region, our customers' consumptive uses of water actually return significant percentages of that water to the local streams and groundwater aquifers upstream of the Delta. It therefore would not be appropriate to apply, to our region and other similarly situated regions, water conservation standards that are as stringent as the standards applied to regions that depend on cross-regional transfers of water. Each drop of water conservation in a transfer-dependent region would essentially cause one less drop of water to be removed from the Delta. A drop of water conserved in a transfer-dependent area therefore generates much more value to the state than a drop of water conserved upstream of the Delta.

More Information Will Be Needed To Evaluate Specific Conveyance Proposals

There is a great deal of uncertainty concerning what new facilities, or Delta improvements, will be proposed to improve the situation in the Delta. The July 11 draft strategic plan proposes a dual conveyance that would involve both a facility around the Delta and improvements in Delta channels. DWR is proceeding with environmental review of proposals that could adopt either that approach or an approach of relying solely on a facility around the Delta to convey water for export. Finally, the Public Policy Institute of California recently recommended relying solely on a facility around the Delta for that purpose.

In light of this uncertainty, it is impossible for our agencies to know, at this time, how any proposed facility or Delta improvement might affect our customers' interests. Similarly, we cannot know now what capacity any particular facility would have and therefore cannot evaluate the extent to which we would need legal protection against the possibility that such a facility

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would enable Delta export interests to lay claim to resources that our region may need in the future. We therefore are not taking a position on any Delta conveyance proposals now.

As a general matter, however, we believe that our region could support a Delta-conveyance proposal that effectively addresses the Delta's problems, does not involve financial contributions by water users that would not benefit from the proposal's implementation and effectively protects against the possibility that the proposed facility would allow Delta-export interests to consume water that is necessary to meet the Delta watershed's future water needs.

Conclusion

We again express our appreciation for the opportunity to comment on the July 11 draft strategic plan. We believe that it contains many ideas that, with further development, can be important parts of a Delta solution. We also believe that such a solution is very important for the entire State. The State's development of water policy and water resources has revolved around the Delta's continuing problems for too long. It is very important to make progress toward a solution to those problems so that the energy that all interested parties have expended on them can be directed to more productive endeavors.

Sincerely yours,

CITY OF FOLSOM

By: 

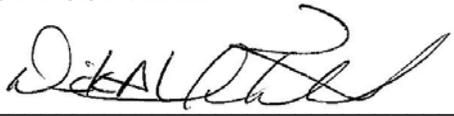
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