

**Municipal Services Agency**  
Paul Hahn  
Agency Administrator



**County Executive**  
Terry Schutten

**County of Sacramento**

September 30, 2008

Honorable Phillip Isenberg  
Chair, Delta Vision Blue Ribbon Task Force  
428 J Street, Suite 440  
Sacramento, CA 95814

Re: Comments of the County of Sacramento on the Fourth Staff Draft of the Delta Vision Strategic Plan

Dear Mr. Isenberg:

Sacramento County has reviewed the fourth staff draft of the Delta Vision Strategic Plan. Sacramento County has commented on previous staff drafts of the Strategic Plan and will not repeat those specific comments here. Those comments, as well as the comments of the Sacramento Regional County Sanitation District ("SRCSD"), are fully incorporated herein.

Comments on Volume 1:

1. Pages 6, 24-27. Sacramento County disagrees with the Delta Vision's stated preference for an appointed body to govern the Delta. As the County has previously noted, elected representation on governing bodies that deal with traditional governance issues is the superior way to proceed. Those who live and work in the Delta (primary and secondary zones) should not be disenfranchised as is proposed by the Delta Vision. The last two checked items under the heading "Existing state agencies retain existing authorities" should be separated into items under a new heading captioned "Local jurisdictions retain existing authorities." We have provided further more specific comments with respect to governance below in our comments related to Strategy.
2. Pages 7-8. Sacramento County believes the modification in wording (as compared to prior drafts) regarding California's water rights laws. However, the reference to and focus on the public trust and reasonable use doctrines remains troubling. The Delta Vision must not disregard prior rights to water and must afford protections to those within the areas of origin. Expressly confirming water diverter's prior rights to water and adding protections to those within the area of origin will alleviate this concern.
3. Page 16. The reference to the "Delta as a place" recites something that those who work and live in the Delta understand very well. Added to that concept is that areas upstream of the Delta are also places that need to be protected. A test for the appropriateness of many of the Delta Vision strategies will be how well the Delta Vision

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protects the Delta and areas upstream of the Delta, as places. Co-equal goals of Delta ecosystem and water supply reliability do not adequately address this concern.

4. Page 18. The goal of revitalizing the Delta ecosystem and restoring habitats is laudable. The County recognizes the public benefits associated with these types of projects and supports the efforts of the Task Force to promote these goals. However, the County notes that the Delta ecosystem is extraordinarily complex; uninformed implementation of habitat restoration projects within the Delta may create unintended negative consequences. For example, projects that are intended to create additional wildlife habitat, restore wetlands, prevent or reverse subsidence, sequester carbon, or manage flood control risk all have the potential to increase environments that favor in-Delta processes that create methyl mercury and other non-conservative pollutants such as TOC. The County therefore urges the Task Force and the State to proceed cautiously in Delta habitat restoration efforts and to work cooperatively with knowledgeable affected local entities, such as the County. All projects, including habitat restoration projects, must be evaluated for impacts on water quality, and responsibility for the impacts of those projects must be equitably distributed within the context of regulatory requirements such as NPDES permits and TMDLs. NPDES permittees should not bear the burden of mitigating for water quality impacts caused by restoration projects. Rather, since these projects confer a statewide benefit, the State should assume the responsibility for mitigating their unintended and potentially negative consequences.

5. Page 20. Strategy 3.5 is to “achieve sufficient water quality improvements to meet drinking water, agriculture, and ecosystem long-term goals.” The fourth draft of the Strategic Plan indicates that “management of water quality is essential” and urges “source control efforts” for “some contaminants, such as mercury, agricultural pesticides, and urban runoff”. The County also recognizes the importance of water quality and urges the State and Federal governments to support broad source control methods that address pollutant sources that may not be effectively regulated or addressed by local agencies. The Extended Producer Responsibility policy adopted by the California Integrated Waste Management Board and the State's Green Chemistry Initiative are examples of such efforts.

The County is also concerned because it is not clear what activities are encompassed within the fourth draft's cryptic reference to “management of water quality.” The previous draft of the Strategic Plan contained many more specific provisions, some of which could be implemented as part of a strategy to “manage water quality.” For example, the third draft of the Strategic Plan suggested that the Central Valley Regional Water Quality Control Board should develop and implement Total Maximum Daily Load programs for areas upstream of the Delta “to reduce the loads of organic and inorganic mercury entering the Delta from tributary watersheds.” If mercury TMDLs are adopted for the Delta and its tributaries, those TMDLs should recognize and fairly allocate responsibility for in-Delta processes that increase methyl mercury loads. The TMDL designation process should be completed in a manner that addresses the watershed as a whole, utilizes public and private resources efficiently, and allocates equitably the responsibility for reducing mercury discharges.

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Concerning agricultural pesticides, the County notes that pesticides used by agriculture in California are already subject to an extensive regulatory regime. The registration process should not allow any pesticide uses that result in water quality impairments. When use of a pesticide is shown to impair a water body, it should trigger timely re-evaluation by the Department of Pesticide Regulation.

Comments on Volume 2<sup>1</sup>:

1. Page 1. Sacramento County has previously commented on the inappropriateness of a focus that considers only co-equal goals of Delta ecosystem and reliable water supply. This is particularly true when one considers the governance principles that are advocated within the Delta Vision. We again recommend either a third equal goal or a condition on the implementation of the two co-equal goals that recognizes that all of California is not similarly situated and that activities implemented to advance or accomplish the two co-equal goals should not redirect substantial adverse impacts to those in the Delta or those who are upstream from the Delta.
2. Page 13. A consideration that should be specifically identified as “constraint criteria” is a recognition of the existing and future operations of the Freeport Regional Water Project as well as SRCSD facilities.
3. Page 35. It is unclear why the Strategic Plan advocates water transfers, but then qualifies that recommendation through ambiguous statements about the public trust doctrine and the California Constitution. The second sentence in sub-section “j” should be deleted or explained to eliminate ambiguities.
4. Page 44. Sacramento County does not support the modifications proposed to the Delta Protection Commission (“DPC”). Primary land use decisions should be left with local government and the DPC should not intrude on activities and decisions within the so-called “secondary zone.”
5. Page 52 and following. The Delta Vision takes all things “Delta” and lumps them together. Not all of the Delta Vision’s recommendations with respect to the California Delta Ecosystem and Water Plan (“CDEW”) are appropriately subject to governance by the proposed California Delta Ecosystem and Water Council (“Council”). Issues associated with local land use planning, infrastructure that is not “water” infrastructure, and public health and safety issues are better left to the locally elected governments to consider. As noted above, even the Delta Vision recognizes that certain agencies need to retain existing authorities. As also noted above, the Council should not be appointed and must include local elected representatives. Even the TRPA model cited by the Delta Vision, as a governance example, has six locally elected representatives among its 15-member Board. An appointed Council should not be granted the responsibility to determine consistency of

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<sup>1</sup> References are to the non-redlined version of the Strategies.

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major local infrastructure with other Delta plans and it should not be given any authority outside of the Delta. To do otherwise would allow a Delta centric agency the power to intrude on matters that have little, if any, relation to its core focus. The recommendation (on page 64) that the Council hold the power to remedy inconsistent actions by local agencies in the Delta through the issuance of cease and desist orders and litigation should be eliminated from the Strategic Plan. The Council, if formed, can challenge local agency decision making through normal administrative processes.

6. Page 55. A Delta Conservancy should not be given land use authority that would intrude on local jurisdictions. Land acquisition by the Delta Conservancy should not be through eminent domain; any land acquisition should be revenue-neutral and only be allowed if it does not adversely affect revenues to local jurisdictions, including in-lieu taxes.

7. Page 56. The DPC should retain its current authority and not be given more. This recommendation combined with that with respect to the Council will effectively eliminate discretionary decision making of local jurisdictions within the Delta and curtail that decision making within the secondary zone.

8. Pages 57-58. A Delta Science and Engineering Board should develop methodology to insure that its work and recommendations are based upon "good science" and not on preferred policy goals. Its utility and effectiveness will depend on its retaining distance from advocacy groups, no matter what is being advocated.

9. Page 59 and following. A CDEW Plan should be compatible with programs that not only stem from the BDCP, assuming one is developed and implemented, but also other HCPs that may be relevant, including the South Sacramento County HCP.

10. Page 65. Financing should not be through fees on those who divert and use water above the Delta. To levy fees in this manner would be to redirect the costs of addressing Delta problems to those who did not create them. Moreover, there is neither statutory nor constitutional authority to levy such fees. The cost of mitigating for the impacts to the Delta caused by the export of water and the costs of providing improved means to export water should be borne by those exporters, not by those within the areas of origin.

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Vision Strategic Plan

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Thank you for allowing the County of Sacramento the opportunity to comment on the fourth draft of the Strategic Plan. We hope that you will carefully consider these comments as you develop the final draft of the Strategic Plan.

Very truly yours,

A handwritten signature in black ink, appearing to read 'P. Hahn', with a long horizontal flourish extending to the right.

Paul J. Hahn  
Agency Administrator

PH:sb

cc: Sacramento County Board of Supervisors  
Terry Schutten, County Executive  
State and Federal Legislative Representatives  
Delta Vision Blue Ribbon Task Force  
Delta Task Force  
County Administrators for Alameda, Contra Costa, San Joaquin, Solano, and  
Yolo Counties  
City Manager of Sacramento  
City Managers of Elk Grove and Galt