

September 2, 2008

Mr. Philip Isenberg, Chairman
Delta Vision Blue Ribbon Task Force
650 Capitol Mall, 5th Floor
Sacramento, CA 95814

EBMUD Comments on Strategic Plan Draft No. 3

Dear Chairman Isenberg and Task Force Members:

The East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on Draft No. 3 of the Delta Vision Strategic Plan (Strategic Plan). EBMUD serves water to 1.3 million people and supports the economy of Contra Costa and Alameda counties. EBMUD relies on the integrity of the Delta levee system and Mokelumne Aqueducts that cross the Delta for over 90% of the water supply for East Bay customers. In addition, EBMUD is implementing a multi-element Water Supply Management Program (WSMP) covering aqueduct security, ecosystem enhancements in the lower Mokelumne River, aggressive commitments to conservation and water recycling, a portfolio of supplemental supplies, and planned customer rationing during droughts. This recently updated WSMP reflects a number of the priorities articulated in the Strategic Plan.

EBMUD commends the members of the Blue Ribbon Task Force (Task Force) for dedicating significant time and effort to craft a set of actions, strategies and policies to advance the Delta Vision goals and responding to public comment. There are four subjects of primary interest to EBMUD in the Strategic Plan, as described below.

Water Use Efficiency

EBMUD commends the Task Force for selecting improvement of water use efficiency as the first strategy of the Strategic Plan and looks forward to working cooperatively with others to achieve it. EBMUD is a leader in water conservation and has invested over \$50 million in water conservation efforts over the past two decades. We are at the leading edge of new conservation measures, including initiation of a Water Use Efficient product testing and labeling program in partnership with others at the state and national level, which will ultimately lead to market transformation for water fixtures and appliances much the way Energy Star has for electrical appliances. We have adopted water service regulations for new development projects that reduce water demand to the lowest feasible levels, using state-of-the art and emerging technologies.

Water reuse has been an important component of EBMUD's water policies and practices for over 30 years, intended to promote wise and efficient use of our limited water supply. EBMUD's recycled water program helps alleviate potential water shortages during droughts and improves water supply reliability. EBMUD has invested approximately \$150 million in developing water recycling projects.

Mokelumne Salmonid Migration

EBMUD appreciates that the potential conflict between water conveyance in the Delta and successful salmon migration in the Mokelumne River corridor has been recognized, with a commitment to resolve conflicts in the near term. Since the drought of the early 90s, EBMUD's resource stewardship on the river has increased by nearly threefold the long-term historic average salmon returns. This restoration success should not be jeopardized by new impacts from the proposed actions under the Delta Vision.

Investment in Delta Levees

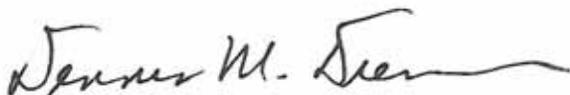
EBMUD urges the Task Force to recognize the broader state interest in protecting key infrastructure such the Mokelumne Aqueducts, which provide a regional benefit extending beyond our own customers. EBMUD has been investing millions of dollars in ratepayer funds to protect its aqueducts, but we cannot be expected to fully guarantee the integrity of these aqueducts without state investments in critical levees. The Strategic Plan should include specific recommendations to expedite the use of voter-approved bond funds that were intended to reduce the threat of levee failure in the Delta.

Financing the Delta Vision

Few issues are as sensitive in the water community as proposals to impose fees or surcharges on water use. EBMUD recognizes that there is a legitimate place for such charges, but it is imperative that these be well justified on the basis of benefits received. Given the reluctance of the Legislature to consider tax increases to balance the state budget over the last decade, there are tremendous pressures to establish or increase fees to supplant the state's General Fund support of existing programs. Statutory protections must be in place against cross-subsidies, redirection to other purposes, and fee increases approved by decision makers without accountability to those being assessed for charges.

The order of EBMUD's comments in the attachment generally follows the sequencing of the Strategic Plan. If you have any questions or concerns regarding these comments, please call Randeke Kanouse, Special Assistant to the General Manager, at (916) 443-6948.

Sincerely,



Dennis M. Diemer
General Manager

DMD:RK:DW

Attachment

**DETAILED EBMUD COMMENTS ON
DELTA VISION STRATEGIC PLAN DRAFT No. 3**

Governance (pp. 13-15)

Strategy 4 - Improve the reliability and predictability of water diverted, and Strategy 7 - Restore Delta flows

1. EBMUD strongly supports “[a]rticulating state land use interests in and around the Delta, especially those that impact the ecosystem, water supply reliability and flood control, and identifying appropriate mechanisms to protect these interests” (pg. 14). A fuller discussion of the state interests in the Delta would identify a broader set of critical infrastructure assets and Delta functions, and provide a better basis for any future fee or assessment proposals imposed upon water agencies. Clarifying these state interests is a vital step in developing appropriate programs and equitable cost sharing to sustain the Delta. The list of state interests should also be elaborated to include recreation and transportation, both for emergency evacuation and for efficient movement of goods and people.

2. The Strategic Plan should provide more detail on the proposed role of the State Water Resources Control Board (SWRCB) to enable stakeholders to understand how much change is proposed to the SWRCB’s current responsibilities, particularly with regard to the co-equal objectives of water reliability and ecosystem protection. Reviewers cannot provide meaningful input if proposed changes are not articulated and justified. The SWRCB has recently adopted its own Strategic Workplan for the Bay-Delta, which is not explicitly recognized in the Task Force’s Strategic Plan. The SWRCB is widely viewed as an impartial adjudicator of water rights with established due process procedures. Any Task Force proposal to alter or supplant the role of the SWRCB should be carefully spelled out so reviewers and legislators can better understand the nature of the governance proposal.

As an example, the meaning of “binding targets and management objectives for the Delta ecosystem” (pg. 14) is not self evident without more detail. How could or would such targets bind all the water users in the Delta watershed? No sense of timing is identified as to how long the Task Force envisions it will take to accomplish this, and whether a voluntary or cooperative approach is recommended, versus a mandatory across-the-board approach that would be contentious. At this point, the SWRCB Strategic Workplan offers significantly more detail as to how various Delta goals and objectives would be accomplished than the Task Force’s Strategic Plan.

3. The Strategic Plan should include more detail about how water will be provided to the ecosystem “within the state’s water rights system by exercising the constitutional principles of reasonable use and public trust” (pg. 15). In making recommendations relating to reasonable use and public trust, the Task Force should fully consider and recognize that some areas or tributaries have already developed commitments to river and ecosystem management that balance protection of public trust resources and demands for water. We would point to the EBMUD partnership with the California Department of Fish and Game (DFG) and U.S. Fish

and Wildlife Service that has developed a comprehensive ecosystem program for the Mokelumne River, as documented and memorialized in the Mokelumne River Joint Settlement Agreement (JSA) executed in 1998.

The JSA contains a variety of flow and non-flow measures, including habitat enhancement projects that have successfully promoted natural spawning and a \$2 million Partnership Fund, which finances continuing programs to benefit the lower Mokelumne fishery and ecosystem. In addition, EBMUD has invested \$12 million in the Mokelumne Fish Hatchery, which has made a major contribution to restoring and enhancing the salmon run on the river.

The JSA flow schedule varies by year type and releases are tailored to the life stages of the anadromous fishery. An adaptive management provision is included that allows the resource agencies to work with EBMUD, adjusting flows as necessary to respond to increased and changing scientific understanding of the river and its needs. EBMUD conducts a detailed monitoring program of the anadromous fishery and riparian ecosystem covering in-migration, redds (salmon nests), and out-migration to aid with adaptive management.

EBMUD also manages the cold water pool in Camanche Reservoir, the final reservoir release point on the Mokelumne River, to ensure the health of the anadromous fishery. There is a critical balancing act in maintaining this cold water pool and meeting the existing flow release requirements. Any additional instream flow releases, such as required Delta inflows above those already adopted, could impair the ability to maintain the necessary temperatures for anadromous fish in the Mokelumne River.

The SWRCB adopted the JSA flows as part of its Decision D-1641. The JSA flows are five times higher under dry year conditions than the prior fishery flow requirement under the 1961 agreement between EBMUD and DFG; this commitment should be recognized as a special case as few other tributaries have gone through this balancing process. The Task Force should appropriately recognize existing restoration actions and not upset the balanced resolution of Mokelumne River water supply reliability and ecosystem revitalization issues. More generally, we urge the Task Force to recommend an assessment of the Delta tributaries on an individual basis. Not all river systems are managed with equal care and attention to the multiple values of instream and consumptive needs.

Managing Delta water flows in statewide context (pg. 16)

Strategy 1 - Vastly improve efficient use of water, and

Strategy 2 - Optimize Regional self sufficiency

4. EBMUD supports improvements to existing water use efficiency programs including expansion of water conservation, water recycling, desalination, and improved groundwater management as called for by the Strategic Plan. With respect to increased water conservation, recognition should be given to prior actions and investments by water agencies to aggressively pursue water conservation. EBMUD has among the very highest levels of per capita investment in water conservation anywhere in the state. The Task Force should encourage using a per capita investment by each agency as a basis for evaluating agencies' commitment to water conservation.

EBMUD has aggressively pursued water conservation since the severe drought of 1976-77, including an investment of \$50 million in conservation programs. These efforts have effectively halted the growth of water use in our service area; EBMUD diversions from the Mokelumne River have been relatively flat since the 1970s, despite substantial population and economic growth. These past actions should be credited if consistency with the California Delta Ecosystem and Water (CDEW) Plan becomes an eligibility threshold for state funding as proposed in the Strategic Plan.

In bolstering water recycling efforts, the Task Force should be cognizant of the issues of cost effectiveness and greenhouse gas emissions. Some water recycling projects can be fairly expensive on a unit cost basis due to the cost of constructing distribution systems, especially for agencies that have already pursued the most cost effective actions. Additionally, recycling with gravity operated water supply systems could result in higher greenhouse gas emissions. These factors do not diminish the importance of water recycling, but highlight that each project must be evaluated in the context of its total energy demands.

Preparing for emergencies (pg. 22)

5. *“The CDEW Plan should identify appropriate designs for specific levees and prioritize needed investments.”* EBMUD concurs with this action and commends the Task Force’s direction provided at its August 21-22 meeting. At that time, stakeholders were requested to address what type of levee designs would be most appropriate for various Delta island land uses and to identify where those standards are already met. EBMUD believes that the Army Corps’ agricultural levee standard P.L. 84-99 is the appropriate standard for the five agricultural islands of concern where the Mokelumne Aqueducts cross the Delta (Palm-Orwood, Woodward, Lower Jones, Upper Jones, and Lower Roberts). Information provided by the Delta Levees Coalition led by Contra Costa County contains a spreadsheet with preliminary information on costs and lineal mileage.

The Task Force should also consider other risk reduction measures in addition to levee improvement, such as scour protection at key infrastructure crossings, cross-connecting aqueducts, and other site specific studies and remedial actions. A suite of improvement actions combined with enhanced emergency preparedness will provide a more comprehensive approach to the risks faced in the Delta. In prioritizing needed levee improvements, the state must consider the full range of interests that derive benefit from the Delta levees to properly direct state investments.

Report Card indicators and associated performance measures (pg. 25)

6. **Water Use Productivity.** The Strategic Plan proposes a reduction in water use per capita, relative to a 2008 baseline, by hydrologic region as a performance measure. The baseline ultimately recommended by the Task Force should include proper accounting for past actions that resulted in demonstrable savings. As noted earlier in these comments, EBMUD diversions from the Mokelumne River have been relatively flat since 1970, despite an increase of nearly

30% in customer accounts accompanied by tremendous economic growth and urban densification that has benefited the East Bay, the Bay Area region and the state.

In any examination of reducing per capita water use, the state must consider how each water supplier is meeting its obligations both to its customers and to protection of natural resources, including past conservation efforts. If the “report card” disregards an agency’s track record and conservation targets are simply set using a current use baseline, this will effectively punish those that have committed to conservation and reward those that have lagged.

7. Delta Risk. The performance measure related to structures in deep flood plains should be revised or supplemented with one focused on high value structures. The discussion of Delta risks fails to distinguish between infrastructure that is critical to an entire region, versus local or private assets with no broader significance. An abandoned barn is not equivalent to the Mokelumne Aqueducts. The length of infrastructure facilities or corridors protected by adequate levees (in either lineal feet or percentage of total length in the flood plain) is a potential measure to consider for the various infrastructure facilities.

Phasing (pp. 29-30)

8. EBMUD supports phasing actions into timeframes, with more detail and specificity on near term actions and more general language on the outlying years. Near term actions that can be implemented immediately should have more attention from the Task Force, particularly actions that can reduce risks and improve Delta conditions. The California Urban Water Agencies previously provided a detailed list of actions that could be implemented in the next 24 months, including improvements for the Delta ecosystem (habitat acquisition and restoration actions), water quality and water supply reliability (Frank’s Tract, operable barriers, Three Mile Slough pilot project), and protection of key levees in the central Delta encircling EBMUD’s aqueducts. Bond funds have been approved by California voters for these purposes and should be expeditiously applied to projects that have broad support, few downsides, and that provide an array of public benefits.

Vastly improve the efficient use of water – Strategy 1 (pg. 33)

Carbon Credits

9. The Strategic Plan suggests that “carbon credits” for water utilities that reduce greenhouse gas emissions as a result of water conservation may be appropriate. We note that the scoping plan for AB 32 (the Global Warming Solutions Act of 2006) evaluates this tool among many others in a comprehensive fashion. We suggest that a cross reference to that effort is more appropriate than raising a stand-alone crediting concept in this Strategic Plan.

Optimize regional self-sufficiency by increasing the diversity of local and regional water supply portfolios – Strategy 2 (pg. 36)

10. *“By 2010, the State Water Resources Control Board (SWRCB) shall set goals for infiltration or direct use of urban storm water runoff throughout the Delta Watershed and export areas”* and

“[b]y 2012, the legislature should pass a law requiring rainwater harvesting in new developments and incentivizing rainwater harvesting retrofits in existing developments.”

Although it is important to consider all creative strategies to maximize water supply, a cost benefit analysis should be conducted before goals and laws mandating the harvesting of stormwater are contemplated. In the urban environment, such capture, storage, and use of stormwater would likely be extremely costly and also fraught with public health concerns. Even in the best of circumstances, this tool is not likely to yield significant water savings and the associated costs may be put to better use in other strategies.

Reduce /eliminate ecosystem stressors below critical thresholds – Strategy 8 (pg. 52)

11. EBMUD supports this action and commends the Task Force for including it. A complex mix of factors can affect the ecosystem aside from how fresh water is moved through the Delta. Related to entrainment is the potential for blocking fish migration routes from the installation of channel barriers to improve export conveyance. The list of performance measures for reducing stressors should include the protection of Mokelumne origin salmonids in addition to Sacramento and San Joaquin salmonids and Delta smelt.

Establish multi-purpose migratory corridors – Strategy 10 (pg. 57)

12. *By 2012, the CDEW Council, the Delta Operations Team, and DWR should implement “high priority” flow improvements. These include . . . reducing adverse effects of flow alterations from through-Delta conveyance during migration periods on the Mokelumne River and tributaries, including potential use of temporary or permanent gates and barriers as appropriate.” (Pg. 59)*

This bullet needs clarification as to what is meant by high priority flow improvements. The Strategic Plan should clarify whether the temporary or permanent gates and barriers would create flow improvements, or rather create adverse effects on flow alterations that must be mitigated. In any event, higher net positive flows from the San Joaquin to the west (QWEST) should be included in the recommendations.

13. *“By 2012, the CDEW Council, the Delta Operations Team, and DWR should resolve high-priority conveyance driven flow conflicts by: . . . Integrating Mokelumne River corridor improvements with all aspects of conveyance planning, including changes in through-Delta conveyance and location of a dual conveyance facility.”*

EBMUD supports this approach to resolve fish passage issues on the Mokelumne River corridor related to conveyance improvements. This conflict is not currently being adequately addressed through the Bay Delta Conservation Plan process. Changes to the through-Delta conveyance route, including operation of the Delta Cross Channel gates, use of temporary barriers and changes to the export pump operations can all affect fish migrating to and from the Mokelumne River. This potential conflict should be addressed in the design and evaluation of ecosystem actions accompanied by a robust monitoring program and adaptive management

provisions. Adverse effects to the Mokelumne River anadromous fishery should be minimized, and it will take concerted effort to accomplish that.

Adopt an overarching policy for levee design and investment – Strategy 13 (pp. 66-67)

14. *“Public funding should be directed primarily to levees that support State interests, especially ecosystem vitality and water conveyance.” (Pg. 66)*

EBMUD concurs that water conveyance is an important state interest, particularly in regard to the health and safety of the state’s residents. The brief description of state interest should be expanded and articulated through specific examples to eliminate any confusion about how the state interest is defined. Additionally, some of the important water conveyance facilities, such as the Mokelumne Aqueducts, should be identified by name to aid in interpretation. The water serving 1.3 million people in the East Bay is a compelling state interest.

EBMUD also supports the evolving effort initiated to articulate key state and other interests in the Delta, which should influence what types of levee improvements and/or risk reduction measures are needed in the Delta. The state interest is broad and includes, but is not limited to: the health and safety of its residents and visitors, the Delta ecosystem, state highways, lands and infrastructure, economic productivity, recreation, and disaster response. A similar list of federal interests should also be developed and include federal infrastructure and lands, federal refuges, the ecosystem (including migratory birds), economic productivity and disaster response. It is important to identify the full range of interests supported by Delta levees before making determinations about the level of benefit received and who should pay.

15. *“DWR should adjust the levee subventions program to support State interests and take necessary action to extend the legislative authority for it.” (Pg. 67)*

The Blue Ribbon Task Force should be more specific about how well (or not) the existing state support provided by the Delta Levee Subvention or Special Projects Programs matches up with the state interests at stake. Those programs are not necessarily designed to enhance the state interests of ecosystem and water conveyance identified on page 66. Further, whether the level of funding for those programs is adequate should be considered, as the Strategic Plan states that “the current levee system is not now providing adequate protection (pg. 66).” It may be that these programs are inherently unable to meet the current and urgent needs for Delta levee improvement on the necessary scale, with a focus on high priority levees. The Task Force should consider additional targeted actions to reduce risks such as scour protection, emergency preparedness projects, stockpiling supplies, and site specific studies to detect internal weaknesses, followed by remedial action.

16. *“The California Delta Ecosystem and Water Plan should: ... Identify beneficiaries of levee improvements and determine cost sharing among identified beneficiaries.” (Pg. 67)*

Over the last decade, EBMUD has been committing \$1.5 million per year for levee maintenance and improvement where its aqueducts cross the Delta; we are not aware of any other entity based outside the Delta making contributions to help improve the levee system.

EBMUD has also made significant capital investments (\$40 million) to protect its conveyance system from seismic and other catastrophic events in the Delta. Any funding arrangements undertaken in the future should consider these contributions. Crafting and enforcing a broad cost sharing arrangement will be challenging, thus an interim plan is needed while the longer term policies recommended by the Strategic Plan are developed. The Strategic Plan should be more specific about expediting the use of currently available bond funds that voters approved for immediate levee improvement.

Create a new governance system to manage the co-equal values and other state interests in the Delta – Strategy 15 (pg. 72)

17. *“By May 2009, the California Legislature should create a California Delta Ecosystem and Water (CDEW) Council.” (Pg. 72)*

The Strategic Plan does not present enough information to justify the creation of another government agency, the CDEW Council. EBMUD looks forward to the next draft that will incorporate the discussions and deliberations of the Task Force meetings on August 21-22. As noted previously in these comments, the proposed role of the SWRCB in the Delta Vision process is unclear. The SWRCB’s Division of Water Rights and its predecessors have been in existence since 1914, when the state began regulating water rights, creating the distinction between pre- and post-1914 appropriative rights. Rights issued by the SWRCB and its predecessors have been relied on for decades by Californians, and billions of dollars have been expended in reliance upon those rights. The state’s economy rests on those rights, which cannot be changed without following legal requirements, including meeting all due process requirements.

In regard to Delta Vision’s proposed role for the SWRCB, it requires far more explanation and justification before urging the Legislature to act. It is unclear whether some superseding body in addition to the SWRCB is proposed. Other areas in the governance proposal (such as the proposed CDEW Council’s role over levee upgrades) have potentially far-reaching consequences. These elements should be expanded to include a clear and analytical rationale before the summary conclusion or action is presented. The concept of a CDEW Council must be subject to broad vetting by all affected interests to ensure its future effectiveness and public support.

Create a California Delta Ecosystem and Water Plan to ensure flexibility and consistency of action among state, federal and local entities – Strategy 16 (pg. 83)

18. *“Develop a legally binding CDEW Plan to establish a detailed management structure to achieve the co-equal goals and direct identified land use issues in the Delta region.”*

The mechanism to achieve agreement and entice parties to participate is not described in the Strategic Plan. The desired outcome is clear in some cases, such as “establish targets and management objectives for water supply reliability for all users of water diverted upstream, within, and exported from the Delta.” However, the Strategic Plan fails to explain how or why all users of water would enter into such an agreement. EBMUD again looks forward to more

detail in the next draft, and will expand upon the governance comments at that time, either individually or in association with other water agencies in California.

Finance the activities called for in the CDEW Plan through user fees and other effective and transparent financing tools – Strategy 17 (pg. 89)

19. *“For example, as part of the management of the co-equal values, there should be a per-acre-foot fee levied on water diversions within the Delta watershed, and a separate fee on any water conveyed through or around the Delta.”*

The Strategic Plan cites the co-equal values of ecosystem protection and water supply reliability as the basis for the fees cited above; however, there is no explanation as to how the fees collected would be used to support either value. The reliability rationale for a diversion fee is highly debatable, given that reliability is a dynamic and system-specific parameter. Clearly, a program that is used to make one water user’s supply more reliable should not be based on cross-subsidies by other diverters. Instead, a beneficiary pays principle should be followed under which fee obligations are linked to benefit received.

Further, not all diversions have equal impacts on the ecosystem. Pumps that export directly from the Delta have demonstrated their significant and well documented impacts on fish. Placing all watershed diverters into the same per-unit fee category immediately calls into question the fairness of that approach. Similarly, conveyance around the Delta does not create the adverse hydraulic impacts that result from through-Delta conveyance. A better understanding of these differential impacts is needed to ensure that any fee system accurately reflects the real impacts by water users. The general proposal, as submitted, ignores these important distinctions and stands to create serious inequities.

The cornerstone of the “beneficiary pays” principle is that a given entity must pay for benefits it receives, while the broader public pays for benefits broadly accrued. It is not possible to assess the appropriateness of the fee proposal until the costs have been identified and allocated using an open, public process. All stakeholders must have the opportunity to present evidence on the record, and based on that evidence proportional benefits must be allocated. The legitimacy of the process depends on the opportunity for all parties to offer evidence and make comments. Stakeholders will not accept the results if the allocations are determined by a small group of decision makers who are not publicly accountable.

In order to determine whether or not a fee structure is fair and equitable, the Strategic Plan must indicate how the fees will be spent and address a number of other critical issues, described below.

Fee basis and structure:

- It is not appropriate to assess fees based on connections or population served, as the definition of “connection” can vary from system to system, and “population served” fails to consider the impacts of industrial, agricultural, and commercial consumption. Per-unit fees based on conveyance around the Delta should not be equivalent to per-unit fees for conveyance through the Delta. If the state imposes a uniform fee for all

diverters, it effectively sends a message that a water user's own stewardship efforts will not be valued, thus creating a disincentive for future, voluntary actions that could provide significant benefit to the ecosystem.

- Not all diversions are equal; some watershed diversions have far greater ecosystem impacts than others. A unit of water diverted from behind a dam does not have the same ecosystem impacts as a unit pumped from the Delta. Any per-unit diversion fees proposed should be calibrated to the actual impacts of the diversion.

Fee protections:

- The creation of broad-based fees and a large revenue stream fund will create a strong temptation for abuse. The Strategic Plan must clearly identify the purpose and intent of the fund and describe how expenditures will be controlled.
- Once a revenue stream is created, "needs" tend to expand quickly. The Strategic Plan must include a forum for the fee-paying entities to participate in establishing and agreeing to the size and management of the fees and resulting fund. Further, any such revenues must be strictly protected against redirection to other state funding needs.
- Fees should not be used to supplant funding for state programs that has previously been drawn from the General Fund.

Cross-system subsidies:

- Protections and full transparency must be implemented to protect against any subsidies from one water system to another. For example, it would be inappropriate for fees collected from a diverter that maintains its own diversion and conveyance system to be used for the planning, construction, or operation of diversion or conveyance facilities for other diverters in the name of "water supply reliability."
- A transparent public process that fully accounts for the proposed fees, proposed expenditures, and estimated benefits will be necessary before the fee proposal can be fully evaluated.
- As the result of good planning and long term investments, some systems that are diverting water from the Delta watershed have lesser reliability issues than some other diverters. The former should not be forced to subsidize reliability enhancements for systems that are in a less favorable position.

Credits for previous and future actions and investments:

- Some water agencies have invested hundreds of millions of dollars in ecosystem restoration projects within their sphere of influence. These systems should not be penalized by paying "fees" for mitigation that they have already addressed.
- To be fair, systems that have proactively taken responsibility for ecosystem impacts should receive credit for those actions. Failure to do so would effectively reward diverters that have not taken responsibility for their own systems.

In order to avoid lengthy delays later in the process, the Strategic Plan should include further discussion to address these issues and provide assurances that fees will not be used inappropriately to subsidize or mitigate impacts of individual diverters.