



VIA US Mail and Electronic Mail

July 15, 2008

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

Re: Delta Vision Strategic Plan

Dear Chairman Isenberg and Task Force Members:

Our comments to the Strategic Plan are set forth below.

Page 23. Strategy 3. #1

“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 systems of water rights and constitutional principles of reasonable use and trust.”

This statement demonstrates a lack of understanding of how California Water Law works. While we appreciated the addition of term “water rights” to the principles, it does not cure the misstatement.. If there is a finding by the SWRCB of waste and unreasonable use as to a particular water user then the water being wasted is subject to appropriation by other appropriators. It is not automatically given to the environment. Likewise, some junior appropriators may lose their rights entirely or in part to meet new objectives and senior appropriators may lose nothing.

Finally, water to “support” the Delta is entirely different than water to “revitalize” the Delta. We would expect “support” water to be water made available to a Basin Plan Objective or to mitigate for a projects impact. “Revitalize” does not appear in the Water Code or The Public Trust Doctrine. Revitalize to what? Based on what? Any water to revitalize the Delta would appear to be a taking and require condemnation proceedings.

Page 25.

“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.”

As we have previously stated to you, the co-equal principles are a violation of

California Law. The Water Code does not put the environment and human consumption on an equal footing. We do not endorse or support this principle. Given that this principle is a premise of the financing scheme, we reject the financing scheme.

This financing scheme has been routinely proposed in various processes as a way to finance fixing the Delta. It has been routinely rejected. The financing scheme is at odds with the underlying principle of regional self-sufficiency. The SJRGA and its members have invested Billions of dollars to create reliable water supplies for their constituencies. People who live in the Delta, or use its facilities need to pay for their own cost of levees, water supply and water quality. Likewise, the entities which move water through the Delta need to pay the cost to move the water through the system. Under the proposed finance system local water agencies and cities would be taxed from dollars currently used to help sustain their regional self sufficiency so Delta Diverters may, in effect, be subsidized by relieving such diverters of the obligation to pay their own way. This financing is at odds with “beneficiary pays”.

Page 28.

“...support native and desirable non-native species...”

What is a “desirable non-native species”? Who determines what is “desirable”? Based on what criteria is a non-native species “desirable”?

As we stated in our comments to the Delta Vision, we support a Delta ecosystem that sustains and restores native species (all Families) and the suppression, reduction and elimination of all non-native species.

Our comments were ignored due to the promoters of Striped Bass and Largemouth Bass tournaments who want to continue to promote their sport and their businesses, a concept we support until it results in the detriment of Native Species.

We do not support a Delta Strategic Plan that does not call for the suppression, reduction and elimination of all non-native species.

Page 30. Action 4.2.

We support establishing floodplains on the SJR from Vernalis and through the Southern Delta.

Page 33.

“Creating a hydraulic separation between Middle and Old River to improve near-term water supply reliability (see Action 9.1) will also improve Old River’s suitability as a migration corridor.”

This statement is true if Old River is no longer hydraulically connected to the export facilities. Otherwise, no fish benefit because the fish are drawn into the export facilities and predation occurs there.

Page 33.

“Climate change should alter this setting significantly, presenting more frequent flood stage conditions as the total precipitation shifts away from snow pack toward rainfall, and the high elevation of the southern Sierra gives it proportionally greater snowpack.”

We are uncertain about this statement. The San Joaquin River Basin has the ability to store large amounts of water. It is uncertain how much the reservoir, tributaries and San Joaquin River hydrographs may change due to climate change.

Page 34.

“The Delta’s native fish evolved in a highly variable system that had much more freshwater inflow than today’s Delta, particularly in the spring and fall.”

This statement is false as it pertains to the San Joaquin River system. In July, August, September and October there was little (less than 500 cfs) flow, from the SJR into the Delta. Now in July, August, September and October the flows exceed 1,500 cfs due to storage releases as well as irrigation operations.

Further,, this statement does not match the ecosystem statement of “desirable non-natives”. While a particular action may be good for native fish, what is the impact on desirable non-native fish?

Page 33.

“Install and use gates or other barriers to reduce diversion of migrants from migratory corridor.”

Yes, the HORB needs to be installed and operated to keep San Joaquin River Fall Run Chinook Salmon on the main migratory path. It was to be installed pursuant to the SDIP. It is called for in SWRCB D-1641. Ten years later it is still not installed.

Page 35. #2.

“Increase the San Joaquin River flows occasionally from September through November to improve upmigration of adult salmonids. Ideally, two separate pulses about 7-14 days in duration each with flows of 2,000-3,000 cfs would facilitate upstream movement of adults by providing migratory cues and help reduce dissolved oxygen barriers.”

There is no science to support this statement. Your effort is to be scientifically based yet you continue to assert matters without any factual basis. This statement, like the fall SJR flows above is not based on evidence and demonstrates a fundamental misunderstanding of how a snow fed system such as the San Joaquin differs from a rain fed system like the Sacramento and how they work differently.

CDF&G and USFWS have continually stated that fall attraction flows are needed to “cue” Fall Run Chinook to move upstream. As the historical hydrograph shows, there were no such flows, “cues”, in September or October of many years on the SJR. Secondly, while CDF&G and USFWS have released water to meet the D-1641 fall attraction flow requirement there has been no study, or data derived, that would indicate that such flows have “cued” Fall Run Chinook. If you have such data, we would of course appreciate receiving it.

The second problem with this statement is that it assumes all such flows would reach the Stockton Deep Water Ship Channel. This is not true. Such an occurrence would depend greatly on the operation of the HORB, export pumping and in-Delta diversion. Recent studies by Jones and Stokes (Brown, R.T., Renchan, S.G. Evaluation of San Joaquin River Flows at Stockton. Jones & Stokes Report to the City of Stockton) seem to indicate the flow split percentage at the Head of Old River bears a substantial relationship to DO in the DWSC.

Page 35. #4.

“Coordinate fish sampling in tributaries in order to better time the release of water to coincide with the readiness of salmonid juveniles to downmigrate. Reduce stressors (entrainment and water quality) throughout the migratory pathway as these flows and fish move to the bay.”

We completely agree.

Page 35. Action 5.2. #3.

“Increase inflows at times when sensitive life stages are near the South Delta pumps under current conveyance and near a peripheral canal intake under possible future conveyance scenarios.”

The SJRGA strongly disagrees with and objects to this statement. If sensitive life stages are near the South Delta pumps, no amount of Sacramento River flow is going to move those species away from the pumps and out to the Bay because of the hydraulic gradient. Imbedded in this statement is the assumption SJR flows will be made available to move the species past the facilities. This statement is akin to the position of no negative flows on Old and Middle River. Increased flows on the San Joaquin River mean that senior water right holders will have to release or forego water to allow a junior appropriator to continue to appropriate because the junior appropriator put and operates his Point of Diversion in the wrong location.

We believe California Water Law is clear. The Projects built their diversions where they wanted them. We didn't tell them when, where or how to divert. If their diversions are causing an impact to species or anything else then they need to mitigate their own impacts.

Making SJRGA water available to minimize or mitigate for Project impacts is a legal "taking".

Page 37.

"Efforts must be made to limit the introduction of new invasives, limit the spread of those that are already here, and perhaps remove them from limited areas of the Delta."

This statement does not go far enough. All non-native species, located anywhere in the Sacramento River, San Joaquin River and Bay Delta need to be suppressed, reduced and eliminated.

The initial cost to suppress or reduce non-native fish species would be simple and cost very little money by modifying fishing regulations to: "In the Sacramento, San Joaquin River and Bay Delta, any recreational fisher can fish at anytime, without a license or limit, for non-native fish." This would cost nothing to implement other than the loss of fishing license fees which could be made up on other licenses.

We would also support a ban on all fishing of: Rainbow Trout below impassable dams; Fall, Winter and Spring-run Chinook Salmon in the San Joaquin River, Sacramento River, Bay Delta and Pacific Ocean off the California Coast until these fish are no longer endangered, threatened, or in the case of Fall Run Chinook Salmon have reached the State of California doubling goal.

Page 39.

"Agricultural diversions are often small in relation to the volume of their sources and much of their demand occurs at seasons of limited fishery sensitivity."

This statement is patently false. We would like to see the data that supports this statement. This year the SJRGA presented the SWRCB with a letter asking how diverters in the SDWA could be diverting 1,800 cfs of water when flow on the SJR was less than 1,500 cfs. Also, the SJRGA inquired as to why, when flows on the SJR were increased from 2,000 cfs to 3,200 cfs on the SJR, In-Delta Diversions of 1,800 cfs were not limited.

Delta Diversions in the South Delta have a significant impact on SJR flow and hydraulics. To simply dismiss them as being small ignores the cumulative impact.

Page 39. #3.

“Carefully manage exports during times of greatest sensitivity with resident and migratory fish distribution.”

Add “native” before resident.

Page 41.

“The surest path to supply reliability is through regional self-sufficiency that makes use of a wide range of supply and demand management tools, including urban and agricultural water use efficiency measures, municipal water recycling, desalination, stormwater harvesting, and conservation, among others.”

We support this statement. We disagree with the remainder of the statement. Regional self-sufficiency is a local exercise of local government. State control is neither warranted nor desirable. The State has failed to properly manage and control the water supply over which it has operational responsibility. It would therefore seem obvious that local agencies will object to demands on managing our supplies. As noted in the Vision and Plan, regional water management efforts are already underway, throughout the State.

We do disagree, however, with an underlying assumption that seems to be imbedded in this strategy. If regions become self-sufficient then more water will be made available to “support and revitalize” the Delta. If more water is made available by regional efforts then we would see higher reliability within the region, and/or the ability to transfer supply from one region that has a reliable supply of water to a region that may not have a reliable supply of water.

Page 44. Action 7.4.

“Increase the percentage of agricultural lands irrigated with highly efficient technology and management practices.”

We have previously commented in this process, CALFED, and elsewhere that such efficiency in agricultural application does not lead to regional self-sufficiency. Such application will often result in a decline to groundwater replenishment. It will also cause irrigation return water that previously has been used by downstream farmers to become unavailable. Such water may be stored in reservoirs for future use, or higher spill events. Neither leads to regional self-sufficiency.

Page 47. Action 7.7.

“Streamline the water transfer regulatory approval process.”

We support the streamlining of the regulatory process.

We disagree with the conditions put on Agricultural transfers. The market should determine the price, terms and conditions of the transfer. Any impacts will be addressed by CEQA.

Page 49.

“Given new technologies and forecasting capabilities, these reservoirs can be re-operated so that water supply yields can be increased without compromising flood protection. In order to maximize yield gains from this re-operation...”

We are uncertain as to whether this is correct. We believe this needs more analysis and study. It may be true and “yield” may be increased. The increase in yield would need to be quantified and compared to the increase and magnitude of flooding. Given the small amount of flood control storage space in the SJR Basin in comparison to the total “yield”, one would expect the benefit to be small.

A worthwhile option to pursue, but seems rather small in the larger context.

Page 58. Action 9.1.

“In the near-term, experimentally implement a Middle River conveyance, as recommended by the Delta Vision Stakeholder Coordination Group”.

We would support a Middle River Conveyance System option, among others. A siphon needs to be installed and the gates need to be shut so there is no hydraulic connection between the export facilities and Old River. All export water would come down Victoria Canal.

Page 60.

“Relocate intake facilities for State and Federal pumps to a single intake on the Sacramento River.”

Support.

Page 62. Action 9.5.

“Identify mechanisms to connect legal in-Delta water users to improved Delta conveyance facilities.”

Support as long as the water supply would be made available by the CVP or SWP.

Page 63.

“Increase resources to the SWRCB to allow for increased enforcement of reasonable use.”

Before resources are increased for enforcement of reasonable use, why not increase resources for enforcement of existing rights.

There is an assumption in this statement, again without supporting data, that there is a great deal of “waste”. If there is such a large amount of “waste” then why hasn’t the SWRCB seen more petitions on this issue? It doesn’t exist and is continually brought out as “an example” of a potential remedy to the Delta situation. Since there are no petitions on the San Joaquin River system regarding “waste” and since there are no specific examples of waste identified we suggest you not rely on water from such proceedings to solve, much if anything. Our member entities report regularly to the SWRCB and no one in the Division of Water Rights, SWRCB, has ever commented on potential waste.

Page 73. Action 12.1.

“Increasing flood conveyance capacity of the San Joaquin River by expanding and restoring floodplains beginning at the Delta’s edge and working upstream.”

Capacity needs to be increased through the Delta, not upstream first. The carrying capacity limitation is downstream of Vernalis, not upstream.

Very truly yours,
O’LAUGHLIN & PARIS LLP

By:


TIM O’LAUGHLIN

TO:ts