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State Water Resources Control Board



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July 31, 2008

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

Dear Mr. Isenberg:

STATE WATER RESOURCES CONTROL BOARD COMMENTS ON THE DRAFT DELTA VISION STRATEGIC PLAN

The State Water Resources Control Board (State Water Board) appreciates the efforts of the Delta Vision Blue Ribbon Task Force in providing a long-term vision for the sustainability of the California Delta. This letter provides comments on the preliminary Staff Draft Delta Vision Strategic Plan (Strategic Plan), dated June 18, 2008. In general, the State Water Board agrees with the concepts and goals identified in the Strategic Plan. However, the Strategic Plan could be significantly strengthened by giving more prominent recognition of the important, existing authorities and capabilities of the Water Boards and recommending a central role for the Water Boards in achieving the Delta Vision goals, rather than creating a potentially competing or redundant governance entity.

As you are aware, on July 16, 2008, the State Water Board adopted a strategic work plan describing activities that the State Water Board, the Central Valley Regional Water Quality Control Board, and the San Francisco Bay Regional Water Quality Control Board will take to protect beneficial uses of water in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta). In addition, the State Water Board currently is developing a general strategic plan that will provide direction through 2012 for the State Water Board's and Regional Water Quality Control Boards' (collectively, Water Boards) water quality and water right activities state-wide. We look forward to our continued cooperation with Delta Vision on planning and implementation related to Bay-Delta issues.

In our review of the Staff Draft Delta Vision Strategic Plan, we identified numerous activities or recommendations that touch on the Water Boards' water quality and water rights responsibilities. For example, the Strategic Plan calls for activities to control contaminants at the source, maximize regional water supply self-sufficiency, increase water conservation and recycling, improve collection of baseline water diversion and use data, and improve compliance with water rights and water quality laws and regulations. Many of these actions are at the heart of the Water Boards' programs and activities. We appreciate the Strategic Plan's acknowledgement of the Water Boards' role in addressing Bay-Delta concerns, and the challenges that we face in relation to the Bay-Delta. Additionally, the Strategic Plan's recognition of the resource limitations facing many agencies, including the Water Boards, is an important consideration when evaluating actions that can be taken in the Bay-Delta.

California Environmental Protection Agency



The State Water Board also offers the following specific comments on the Strategic Plan.

Governance

The State Water Board believes that the idea of creating a California Delta Ecosystem and Water (CDEW) Council and plan needs more refinement, particularly in defining the Council's authority and responsibility with respect to the Water Boards. At this point, we are concerned that Delta Vision is creating a process of conflict by forming an agency that will have overlapping authority with the Water Boards. The Strategic Plan calls for the Council to develop a legally binding plan to manage the co-equal values of a reliable water supply and the Delta ecosystem. It specifically provides for the State Water Board to incorporate and approve the CDEW plan through a water quality control plan amendment and associated water rights decision or other proceeding. It is currently unclear whether the Water Boards will be involved in development of the CDEW plan. It is also unclear to what extent, if any, the State Water Board will retain or exercise its independent authority in considering whether to incorporate or approve the CDEW plan and related actions.

Moreover, the proposed Council apparently would have the authority to determine whether the actions of the State Water Board comport with the Plan. This authority conflicts with the Legislature's past determination that the State Water Board should have a high degree of independence as a regulatory, quasi-judicial body.¹ Because the State Water Board conducts adjudicative proceedings in which other state agencies may participate as parties, it must take care to maintain its impartiality and independence to avoid an appearance of bias. In fact, the State Water Board's impartiality has been challenged in litigation, in part, on the theory that the State Water Board cannot be impartial in proceedings where the California Environmental Protection Agency has taken a position. The State Water Board prevailed in the litigation, but only because it was careful to maintain its impartiality and independence. If the Council has authority over State Water Board actions, it will be more difficult for the State Water Board to defend itself against claims that it is not sufficiently independent to provide due process.

Water Supply Reliability

An example of potential conflict with Water Boards' programs and policies can be found in Action 7.4 of the Strategic Plan, which calls for consideration of an exemption for individual irrigators from the Regional Water Quality Control Boards' (Regional Boards) irrigated lands regulatory programs. The exemption would be available upon installation and maintenance of high efficiency irrigation systems or other equipment and methods that would eliminate return flows to surface water systems. While the State Water Board recognizes the advantages of incentive-based programs to achieve water quality objectives, such programs must be carefully tailored to ensure that water quality objectives are met and that any water quality improvements continue to be made. In this case, Action 7.4 focuses on water use efficiency but does not recognize that minimizing agricultural return flows is just one element of a comprehensive program to control agricultural discharges. Stormwater runoff and subsurface drainage must also be addressed. Providing an exemption from regulation based solely on improved water

¹ As an example, in 1956 a legislative committee recognized the inherent conflict between water supply operations and water right administration and recommended establishing the State Water Board's predecessor and Department of Water Resources as separate agencies. This separation exists today.

use efficiency ignores the fact that discharges from agricultural lands include a variety of sources that should be regulated. Such an exemption would limit the Regional Boards' ability to address such discharges in a comprehensive manner. Accordingly, we are opposed to exemptions to the irrigated lands regulatory programs, and instead believe that consistent application of program requirements is the best way to protect water quality.

Moreover, detailed recommendations regarding implementation of Water Boards' regulatory programs, such as Action 7.4, appear to be out of place with the broad strategies described elsewhere in the Strategic Plan. Such recommendations may be more appropriate for the proposed CDEW plan. In any event, I encourage you to work closely with the Water Boards' staff when developing specific water quality and water right recommendations in order to gain a full understanding of the regulatory and technical issues involved.

Thank you for the opportunity to comment on the Strategic Plan. Please contact me if the Water Boards can provide additional assistance as the Task Force continues to develop a final Strategic Plan.

Sincerely,



Tam M. Doduc
Board Chair

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