



1331 Concord Avenue  
P.O. Box H2O  
Concord, CA 94524  
(925) 688-8000 FAX (925) 688-8122  
www.ccwater.com

April 17, 2013

**Directors**  
Joseph L. Campbell  
*President*

Karl L. Wandry  
*Vice President*

Bette Boatman  
Lisa M. Borba  
John A. Burgh

Jerry Brown  
*General Manager*

Ms. Cindy Messer  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

**Subject: Delta Stewardship Council's Proposed Rulemaking, Modified Text of Proposed Regulation dated April 4, 2013**

Dear Ms. Messer:

The Contra Costa Water District (CCWD) appreciates the opportunity to provide comments on the Delta Stewardship Council's (DSC) Modified Proposed Delta Plan Regulatory Package dated April 4, 2013. We would also like to acknowledge the significant effort of DSC staff to address the numerous comments received from diverse interests around the state, including CCWD, on the November 16, 2012 version of the draft regulations. Changes made in the current draft have resulted in an improved draft regulation; however, CCWD has a number of remaining concerns.

Section 5001(h): The definition of "coequal goals" remains lengthy, repetitive, confusing, and contains regulatory elements not appropriate in the definitions section of the regulation. The "coequal goals" are defined by statute; the additional definition of what it means to achieve the coequal goals does not facilitate understanding of or compliance with the regulations and should be deleted. The stated reason for including the definition of achievement of the coequal goals is to aid in determining whether a plan, program or project meets the definition of a "covered action". However, many of the actions listed (e.g., expanding groundwater and surface storage both north and south of the Delta) have little to do with such a determination, and subsections (3) (A) – (F) are strategies to protect the unique values of the Delta and do not aid in determining whether a proposed action meets the criteria of a covered action. If the DSC determines to keep the definition of "achievement" of the coequal goals in the regulation, CCWD suggests that subsections (1) and (3) be rewritten to be more succinct and descriptive similar to subsection (2).

Section 5001(j)(3): This section of the definition of a "covered action" is prescriptive in nature and should be deleted or reworded to simply describe who makes the determination that a proposed action is a covered action.

Section 5001(y): "Proposed action" as defined overlaps with and is apparently used interchangeably with "covered action". Having two terms that mean the same thing is confusing. The two terms should remain distinct. All plans, programs or projects proposed within the jurisdictional boundary of the DSC are "proposed actions" which

are reviewed against the screening criteria to determine whether they are “covered actions”. If a project meets the criteria for a “covered action”, it should thenceforth be called a “covered action”. A proposed action that does not meet the criteria would not be subject to these regulations.

Section 5001(dd)(3): The declaration that temporary water transfers will not have a significant impact for purposes of determining whether a project meets the definition of a covered action is consistent with existing state law that exempts such transfers under CEQA. Putting a sunset on this exemption, however, would be inconsistent with state law and could result in project proponents having to conduct environmental analysis for consistency with the Delta Plan when not required under CEQA. The time required to go through the DSC consistency process may make one-year transfers ineffective, reducing the tools available for agencies to reliably provide water to their customers. The stated purpose for the sunset clause is to encourage DWR and SWRCB to implement transfer measures recommended in the Delta Plan. However, holding the beneficiaries of temporary transfers hostage is not an appropriate tactic.

Section 5002(b)(2) and (4): Both of these subsections include requirements that are duplicative of other state and federal regulatory programs. Projects not exempt from CEQA already have to provide mitigation for all environmental impacts. The relationship between the mitigation requirements in 5002(b)(2) and under CEQA needs to be clearly described, with a goal that this requirement should not result in additional mitigation beyond what is necessary to satisfy CEQA. Ecosystem restoration and water management projects that might involve adaptive management would likely require permits from state and federal wildlife agencies. Those permits usually require adaptive management and financial assurances. Again in an attempt to avoid duplication and additional work, subsection (b)(4) should include language that wildlife agency approved adaptive management plans and financial assurance programs are deemed consistent with this policy.

Section 5003(b): The new language in (b) seems to exempt DWR and Reclamation since they are explicitly excluded from the definition of “agricultural supplier” and do not meet the definition of “urban suppliers”, and would not apply to agricultural water users serving less than 10,000 acres. What is the basis for exempting these suppliers from the requirements of this section?

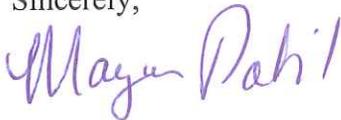
Section 5003(c): Urban Water Management Plans (UWMP) are long-range planning documents that change over time in response to changing conditions and technologies. Requiring agencies to implement all programs and projects in their UWMP that are cost effective and technically feasible which reduce reliance on the Delta in order to be consistent with this policy is unrealistic and unnecessary. An agency is required to update the UWMP every five years, yet an UWMP scope extends for decades to the future. In CCWD's case, future water supply planning extends out fifty years and includes scenarios involving potential growth, climate change, water supply reliability

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and other factors that are possible, yet unknown. Requirements to implement all cost effective and technically feasible programs is not possible nor necessary, given the long lead time in determining the actual necessity of the actions. The requirement in 5003(c)(1)(C) to begin documenting measurable progress in reducing reliance on the Delta is sufficient to show whether or not agencies are contributing to implementation of this policy. CCWD recommends deleting references to implementation in 5003(c)(1)(B).

We appreciate this opportunity to provide comments on the modified rulemaking package. If you have any questions on our comments, please contact me at [mpatil@ccwater.com](mailto:mpatil@ccwater.com) or by phone at (925) 688-8018. We look forward to continuing to work with agencies and stakeholders to achieve the coequal goals of improving water supply reliability and protecting, restoring and enhancing the Delta ecosystem.

Sincerely,



Marguerite Patil  
Special Projects Manager

MP/FG:wec