



CVCWA

Central Valley Clean Water Association

Representing Over Fifty Wastewater Agencies

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June 13, 2012

Sent via electronic mail to: deltaplancomment@deltacouncil.ca.gov

Chairman Isenberg
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: Central Valley Clean Water Association's Comments Regarding Final Staff Draft Delta Plan

Dear Chairman Isenberg and Council Members:

On behalf of the Central Valley Clean Water Association (CVCWA), we appreciate the opportunity to provide comments to the Final Staff Draft Delta Plan (Final Draft Plan). CVCWA is a nonprofit association of Publicly Owned Treatment Works (POTWs) throughout the Central Valley whose primary mission is to represent Central Valley wastewater collection, treatment, and water recycling agencies in regulatory matters while balancing environmental and economic interests. Many of CVCWA's members will be directly impacted by the Delta Plan and have a significant interest in its development and implementation.

To the extent that CVCWA's comments on the previous drafts of the Delta Plan, including the most recent comments regarding the Fifth Staff Draft Delta Plan, have not been incorporated into the Final Draft Plan, we reiterate our concerns stated therein and incorporate them by reference. Specifically, there are still a number of problems with provisions contained in several previously identified chapters, including most notably *Chapter 6: Improve Water Quality to Protect Human Health and the Environment* (Chapter 6), which have not been addressed. However, in addition to the concerns highlighted in previous comments, there have been several notable changes to the Final Draft Plan that also pose significant concerns for CVCWA and its

members. CVCWA's comments with respect to the Recommendations contained in Chapter 6 are provided here.

WQ R1: The statement that water quality should be maintained at a level that enhances beneficial uses may not be a feasible or reasonable recommendation. It is requested that the word "enhance" be eliminated or qualified to reflect the notion that enhancement may only be possible in limited circumstances. Further, the Porter-Cologne Water Quality Control Act (Porter-Cologne) requires "reasonable" protection of beneficial uses. To the extent that enhancing beneficial uses would not reasonable, this recommendation is inconsistent with Porter-Cologne.

WQ R3: This recommendation suggests that State and Regional Boards should evaluate and propose special water quality protections in undefined areas of the Delta. CVCWA is concerned with the open-ended nature of this statement. Any "special water quality protections" may only be adopted in accordance with Porter-Cologne by amending applicable water quality control plans. To ensure that the proper process is understood, CVCWA's recommends that the statement in question be modified to clarify that a public-process pursuant to Porter-Cologne will be followed in the event a shift in water quality management or regulation from adopted approaches is proposed.

WQ R6: CVCWA previously objected to the Fifth Staff Draft Plan's recommendation (former WQ R3), which specified that the State Water Resources Control Board (State Board) and/or the Central Valley Regional Water Quality Control Board (Central Valley Regional Board) should complete development of a Strategic Workplan for protection of groundwater beneficial uses, including groundwater use for drinking water, by December 31, 2012. This recommendation is still generally contained in the Final Draft Plan, identified as WQ R6. However, the recommendation has been modified to remove reference to the Central Valley Water Board. By removing the reference to the Central Valley Water Board, the Delta Plan appears to be making a recommendation for a new policy that would apply statewide. While CVCWA does not know if such an action is necessary for other regions of the state, with respect to the Central Valley, and to the extent this revised recommendation would apply in the Central Valley, CVCWA reiterates that this recommendation is unnecessary, contains an unrealistic timeline for development, and duplicates efforts already undertaken by the Central Valley Regional Board. The statement should be revised to acknowledge the Central Valley Regional Board's current ongoing efforts, including the CV-SALTS effort, and should recommend a coordinated effort to achieve specified goals within a reasonable time frame.

WQ R7: CVCWA is an active participant in CV-SALTS on behalf of its member agencies in the Central Valley. Further, many of its member agencies and other POTWs also actively participate in CV-SALTS. However, there is little to no participation by water suppliers, which is essential. Thus, CVCWA supports this recommendation with respect to water suppliers but believes it is unnecessary for POTWs since they are already active.

WQ R8: This recommendation includes several different recommendations associated with various regulatory processes currently under way by either the State Board or the Central Valley Water Board. With respect to nutrient policy development for inland surface waters, the proposed timeline of completion by January 1, 2014 is overly aggressive. The Nutrient Policy for Inland Surface Waters is a complicated undertaking by the State Board that will need extensive work to arrive at a sound policy. It is requested that the recommended date for completion of this effort be changed to 2018 to be consistent with the nutrient criteria development efforts in the Bay and Delta.

Additionally the second bullet of Water Quality Recommendation 8 states that the Water Boards should prepare and begin implementing a nutrient study plan for the Delta and Suisun Bay by January 1, 2013. Considering the schedule for the Delta Plans adoption is December 2012 this proposed deadline is not realistic. The San Francisco Bay Regional Water Board and State Water Board have already began work on studying nutrients (SF Bay Numeric Nutrient Endpoints (NNE)) in the San Francisco Bay (including Suisun Bay), but the Central Valley Water Board is only at the early stages of developing a plan for developing nutrient objectives for the Delta. Therefore, we request the date of January 1, 2013 be changed to “one year from adoption of the Delta Plan” to allow for adequate time for the Central Valley Regional Water Board to develop a robust plan that can be implemented.

WQ R9: CVCWA supports the development of a Delta Regional Monitoring program and is an active participant in the process to try and make this happen. With respect to this recommendation, CVCWA recommends that language be added to emphasize that the Delta Regional Monitoring Program should be coordinated with efforts to develop and implement ecosystem modeling tools for the Delta. Additionally it is requested that the Delta Science Program provide financial support for this tool development and coordination with regional monitoring efforts.

WQ R10: CVCWA previously objected to the Fifth Staff Draft Plan’s recommendation (former WQ R8) specifying that that the Central Valley Regional Board should require responsible entities that discharge wastewater treatment plant effluent or urban runoff to Delta waters to evaluate whether all or a portion of the discharge can be recycled, otherwise used, or treated in order to reduce contaminant loads to the Delta by January 1, 2014. This recommendation is still contained in the Final Draft Plan, identified as WQ R10. As noted previously, the addition of this recommendation suggests that such discharges, which are subject to state and federal permitting laws, should be evaluated outside of the normal permitting process, and be subject to requirements that may not be consistent with determining compliance with adopted water quality standards. It also suggests that the Central Valley Water Board needs to consider application of water rights law in its NPDES permitting determinations. CVCWA continues to object to this recommendation for several reasons. First, compliance with water quality standards is an essential function as part of the NPDES permitting process, which is implemented

continuously, with renewals every five years for NPDES dischargers. It is not necessary to arbitrarily re-evaluate NPDES permits outside of their normal five-year renewal process. Second, the Central Valley Water Board does not have the authority to require “treatment.” The Central Valley Water Board must adopt permit limits to ensure compliance with water quality standards. It is then up to the permittee to determine the best mode of compliance. For some, this may include treatment, for others it may be more effective to implement source control methods, recycling or alternative methods of disposal. It is inappropriate to suggest that the Central Valley Water Board should evaluate treatment options as part of the permit renewal process. Third, the Central Valley Water Board has no authority with respect to “water rights laws.” Based on the reasons, WQ 10 needs to either be removed in its entirety, or be revised to be consistent with existing NPDES permitting processes.

Additionally, CVCWA is surprised that this recommendation is limited to those discharging to the Delta. CVCWA encourages water recycling where it can be reasonably and effectively implemented. The Delta Plan should encourage water recycling, especially in areas where water is diverted outside the Delta watershed.

Other Comments

Page 231, line 34: It is requested that the words “Sources and” be deleted from the bullet pertaining to pathogens to make it consistent with all of the other bullets on this page.

Page 231, line 35: It is requested that the bullet pertaining to water quality models be expanded to include the development of integrated models for the ecosystem, covering hydrodynamics, water quality, food web, nutrient cycling and other ecosystem processes.

Page 233, line 35: It is requested that the statement be modified to state “Progress toward reducing concentrations of inorganic nutrients...in Delta Waters over the next decade, to the degree such reductions are determined to be necessary to improve the health of the Delta ecosystem.”

Finally, as noted in CVCWA’s previous comments, the “stressor fee” concept and funding structure contained within the Fifth Staff Draft Plan, previous drafts of the Delta Plan, and included as part of the Final Draft Plan continue to be a major concern for CVCWA and its members. (See Final Draft Plan at p. 291, lines 1-10 and Appendix O.) CVCWA has commented extensively on the underlying flaws in the “stressor fees” approach in its comments to each draft of the Delta Plan in the past, and need not reiterate those comments in full here. However, we would like to again point out the following fundamental flaws in the stressor fee approach: (1) the fee proposal is not inclusive of all stressors; (2) the stressor fee concept fails to account for numerous fees already paid by dischargers; (3) no credit is given to stressors who spend funds to reduce impacts in the Delta; and (4) public entities that may be subject to the stressor fees are subject to Proposition 218. As it relates to the financing provisions, however, we appreciate that

the Final Draft Plan has seemingly eliminated the previous proposal to procure ten years of up-front funding for the Council and Conservancy, an issue CVCWA had previously noted was virtually unprecedented and inappropriate.

On a more general note, as described in CVCWA's previous comments, the Final Draft Plan fails to address the significant role of exports, non-native species, and entrainment on the deterioration of the Delta ecosystem, and does not strike the appropriate balance between identifying contaminants and discharges as "stressors" and discussing the role of exports as a stressor in the Delta. The overall approach contained in the Final Draft Plan seems to overemphasize contaminants and discharge as a "stressor" to the Delta ecosystem and simultaneously fails to adequately discuss the significant role of exports and entrainment on that same ecosystem.

CVCWA appreciates the opportunity to comment on the Final Draft Plan. If the Council or staff have any questions or concerns, please do not hesitate to contact me at (530) 268-1338.

Sincerely,



Debbie Webster,
Executive Officer