



Coalition for a Sustainable Delta

July 2, 2010

VIA E-MAIL

Phil Isenberg
Chair, Delta Stewardship Council
650 Capitol Mall
Sacramento, CA 95814

Re: Third submission regarding the Interim Delta Plan

Dear Chairman Isenberg,

The Coalition for a Sustainable Delta (“Coalition”) is writing to provide comments to the Delta Stewardship Council (“Council”) regarding the First Draft Interim Plan. On May 12 and June 9, 2010, the Coalition submitted comments on the Interim Delta Plan. In our previous letters, we provided concrete and specific suggestions regarding actions under the Interim Plan, including immediate action to reduce predation by non-native species in the Delta and enforcement of existing water rights and water quality laws, as well as overarching comments on the purpose and structure of the Interim Plan.

Meaningful Public Comment and Participation

It is imperative that public comment and recommendations be considered and incorporated in a meaningful and timely manner. Appendix III of the First Draft Interim Plan lists summary points of stakeholder and public recommendations for *illustrative* purposes only. From reviewing the appendix, it is impossible to evaluate whether all public comments were considered. Moreover, the format of these bullet point summaries means that more nuanced or complex issues raised in the public comments may have been lost in translation. We are hopeful that the next draft of the Interim Plan will include a more detailed discussion of the various issues raised in our comments and comments submitted by other stakeholders and the public.

The Interim Plan is scheduled for final approval in August. The final draft of the much more comprehensive Delta Plan is scheduled for November. With only five more opportunities to submit comments on Interim and Delta Plan drafts, it is vitally important that the Council and staff review and evaluate public comments in a thorough and timely manner and incorporate public comments in each subsequent draft Interim Delta Plan and final Delta Plan. We also suggest that Council staff provide briefings at Council meetings to present public input that was considered but not ultimately included in the draft Interim Plan and Delta Plan in order to provide opportunities for discussion among Council members and opportunities for public comment.

Several of the Coalition's comments on the First Draft Interim Plan address topics that were previously covered in the Coalition's May and June letters to the Council. We will briefly revisit these topics to ensure that they receive adequate consideration for the next draft. In addition, for your convenience, we have summarized our previous comments in an attachment to this letter (see Attachment A).

Best Available Science

The most important of these topics is the establishment of an adequate adaptive management framework to incorporate "best available science" into policy determinations, decision-making, and other activities in the Delta. **The interim plan must do more than reference best available science; it must exhibit an understanding of how science is actually employed in support of Delta restoration and management efforts.**

The credibility of the interim plan is greatly dependent on transparency and the use of "best available science." The draft plan acknowledges the essential role of science in meeting policy objectives and in developing performance measures and other design and implementation tasks. It is disappointing then that even a rudimentary description of how the interim plan will engage science is deferred to subsequent drafts. Significantly, the use of "best available science" entails not only identification of reliable knowledge about the physical and biological properties of and processes in the Delta, it also encompasses the way in which science will inform management planning and implementation

In fact, it was the ad hoc application of "scientific" information to delta planning and management -- not the lack of scientific information itself -- that was a major contributor to the disappointing performance of CALFED. More recently, both a National Research Council committee in *A Scientific Assessment of Alternatives for Reducing Water Management Effects on Threatened and Endangered Fishes in California's Bay Delta* (2010) and the U.S. District Court for the Eastern District of California (in the consolidated delta smelt and salmon cases) found a number of the conservation actions in the biological opinions by U.S. Fish and Wildlife Service and National Marine Fisheries Service not to be based on defensible science or not supported by the record. These assessments found fault with agency decisions, not because useful scientific findings were unavailable or had not been cited, but because the agencies did not vet the data through the obligatory process of effects analysis -- whereby population-response relationships of listed species were considered in light of all environmental stressors and then used to assess management and mitigation options. In other words, the biological opinions are not criticized for a lack of best available science, but for the failure to appropriately evaluate and use the science.

In both the Interim Delta Plan and the Delta Plan, the Council should ensure that:

- The plans recognize explicitly that "best available science" includes, not just the selection of reliable scientific information that will help inform Delta policy and

management, but a structured decision support framework to bring science-based findings to best practices using transparent effects analyses and risk assessment.

- The plans describe how adaptive management approaches will inform each of the projects and program actions proposed in the plans, and provide evidence for how project-specific monitoring will contribute to management actions that are effective, efficient, and accountable.
- The plans describe how the Independent Science Board will collaborate with agency staff to maximize the utility of scientific and other technical information in guiding management actions, establishing performance measures, and interpreting monitoring data on project effectiveness.
- The plans articulate how stakeholders and other sources of essential technical expertise will be engaged and represented in project planning, implementation, and performance review.

Additional Comments

In addition to our above comments, the Coalition reiterates its suggestions regarding ecosystem restoration goal-setting, treatment of flows, importance of enforcement, and the availability of short term actions. A more detailed treatment of each of these topics is provided in the Coalition's letters to the Council dated May 12 and June 9, 2010.

- **Goal setting for ecosystem restoration must be based on a quantitative analytical framework or model that can be used to rank the importance of the most critical limiting factors:** In *Listen to the River: An Independent Review of the CVPIA Fisheries Program* (2008), an independent review panel specifically criticized the goal setting of the Central Valley Project Improvement Act (CVPIA). They found that the CVPIA program failed to collect statistical information or articulate and attempt to falsify an informed hypothesis regarding the biological potential that could be realized from addressing the limiting factors. Without this data and analysis, it is impossible to prioritize activities or to evaluate the effectiveness and efficiency of CVPIA actions. Here, Appendix IV of the First Draft Interim Delta Plan proposes "Performance Measures and Targets" for ecosystem restoration which appear largely to be based upon best professional judgment or language borrowed from other documents rather than on the basis of quantitative information and statistical analysis of ecological conditions. For instance, performance measures focus on the number of acres of various types of land rather than the identification of physical habitat that supports important biological functions and the quality and location of such habitat. **Even more egregious is the proposed use in the Interim Delta Plan of the "doubling goal" of salmon, which was specifically discredited by the independent scientific review panel in *Listen to the River*.** The selection of performance measures and targets must be based on a quantitative analytical

framework rather than an amalgamation of the same failed targets proposed in past Delta efforts.

- **Flow criteria for the Delta must be considered within the broader context of habitat needs of multiple species:** The draft Interim Delta Plan suggests that the State Water Resources Control Board flow criteria form the core element of one of six “tools” to organize critical information in the Interim Plan. As discussed on page 8 of the Coalition’s first letter dated May 12, 2010, consideration of flow criteria must be considered in the broader context of habitat needs. Habitat includes both the physical space in which an animal or plant lives and the abiotic and biotic resources in that space. In other words, “flow” does not equal “habitat”. Moreover, the use of a single species to identify management actions for the entire Delta will not be effective where habitat components vary among multiple species. Instead, as recognized in *The State of the Bay-Delta Science*, a careful consideration of the habitat needs of at-risk native fish must occur in the context of a broader ecosystem-management based approach to the Delta (CalFed Science Program 2008).

- **Enforcement of existing laws should be a central action under the Interim Delta Plan:** Enforcement of existing laws is a short term action that can be implemented immediately under the Interim Delta Plan. For example, through the Fish and Game Code and California Water Code, both the California Department of Fish and Game and the State Board have existing enforcement authorities to address on-going, illegal water diversions. Water quality violations should be addressed by the California Porter-Cologne Water Quality Control Act and federal Clean Water Act. **An enforcement plan under the Interim Plan should include:**
 - A report to the Council by state agencies involved in Delta activities on their (1) enforcement obligations; (2) existing enforcement activities; and (3) enforcement resources, including an assessment of what resources are needed to fully meet enforcement obligations.
 - An analysis by legal counsel regarding available enforcement tools.
 - Creation of a plan, for inclusion into the Delta Plan, to implement full enforcement of existing laws.

- **The Interim Delta Plan should include short term actions that can be implemented before 2012:** There were few concrete, useful, short term actions included in the First Draft Interim Plan beyond those already articulated in the legislative language. The Coalition suggested several short term actions in both its first and second comment letters. **The actions include:**
 - Elimination of bag and take limits on striped bass and largemouth bass to reduce predation of listed species (as requested by the federal National Marine Fisheries Service)
 - Establishment of a delta smelt hatchery

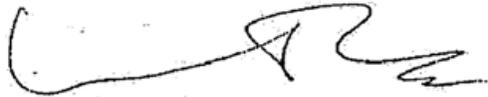
- Improved management of hatchery produced salmon and steelhead
- Protection and enhancement of existing habitat
- Development of an inter-agency initiative to strengthen the enforcement of water quality provisions
- Collection of information on in-Delta diversions and assessment of actions to reduce impacts to aquatic species
- Enforcement activities, including measures to halt and address illegal diversions and water quality discharges in violation of the federal Clean Water Act and California Porter-Cologne Water Quality Control Act.

More comprehensive descriptions of the short term actions are provided in the Coalition comment letters of May 12 and June 9, 2010.

Conclusion

The Interim Delta Plan will provide a framework for the organization and approach of final Delta Plan and will initiate short term actions to fill the gap before the Delta Plan is implemented. As such, it is vitally important that the Interim Delta Plan establish the proper adaptive management framework to ensure that science properly informs management and policy decisions. The Interim Delta Plan should also provide for meaningful actions that go beyond simple recitation of statutory language or a rehashing of the typical laundry list of activities from past failed attempts at Delta management. In addition, the Council should ensure that public comments are actually considered and incorporated in a timely manner into future drafts of the Interim Plan and Delta Plan.

Coalition for a Sustainable Delta



By: William D. Phillimore, President

Attachment (1)

Summary of Previous Recommendations Provided by the Coalition for a Sustainable Delta to the Delta Stewardship Council

Specific, Short-Term Actions to Address Multiple Stressors

- A single species/single factor approach is not the most effective way to address the broad problem of native species decline. Instead, the Interim Plan should recognize that species declines are part of a multiplicity of interlinked and interacting activities and factors in the Delta.
- The Interim Delta Plan should take a comprehensive, ecosystem based approach to addressing the multiple stressors on the Delta ecosystem and its fishes.
- Short term actions described below are supported by existing literature.
 - Establish a delta smelt hatchery to facilitate establishment of a refugial population and to provide fish for supplementation of wild populations if so desired.
 - Work with federal agencies to implement improved management of hatchery produced salmon and steelhead and establish the practices of mass marking, selective harvest of hatchery fish, and weirs to enhance reproductive success of natural origin spring-run Chinook salmon and steelhead.
 - Manage striped bass and largemouth bass to reduce predation of listed species. Measures should include elimination of bag and size limits on striped bass and largemouth bass. NMFS specifically recommends: “*No minimum size limit*” and “*No bag limit*” be imposed on striped bass fishing in the Delta.
 - Protect and enhance existing habitat, beginning with identification of physical habitat that supports important biological functions. Restoration and habitat enhancement activities should be consistent with these findings.
 - Develop an inter-agency initiative to strengthen the enforcement of water quality provisions. Impacts from stormwater runoff, in-Delta agriculture and wastewater treatment facilities must be considered.
 - Collect information on in-Delta diversions and assessment of actions to reduce impacts to aquatic species.
- Additional near term actions should be included in the Interim Delta Plan to begin to address changes to the Delta food web, harmful algal blooms, invasive species, future impacts from climate change and changing ocean conditions.

Use of Adaptive Management and Best Available Science

- The Interim Delta Plan should be based upon an integrated, science-based conceptual foundation and framework that incorporates an explicit adaptive management program.
- By connecting human actions, natural variation, environmental change and resulting biological responses, the conceptual model should allow the Council to

identify uncertainties, risks and opportunities for management action; direct monitoring to resolve uncertainties; and plan for different courses of action at different levels of risk depending on how these uncertainties and conditions resolve over time.

- A comprehensive monitoring and evaluation program must complement and assist the adaptive management framework. The data in the monitoring and evaluation program should be shared among agencies, stakeholders and non-profits through a centralized database. Protocols for conducting and reporting monitoring will assist in this effort.
- The adaptive management framework and monitoring and evaluation program is necessary to ensure that science efforts address the specific challenges confronting resource managers and regulators in the Delta and inform policy and management decisions.
- A Delta Report Card will assess progress towards identified and measurable goals. The design of this report card should occur under the Interim Delta Plan.
- The Council should coordinate with ongoing monitoring initiatives in the Delta to establish a framework for the collection, compiling, assessment and reporting of readily available data.
- Under the Interim Delta Plan, the Council should initiate its own independent assessment of scientific data, analyses and assumptions underlying current management actions in the Delta to ensure that the Delta Plan pursues ecosystem-based management as that term is used in the report of the CALFED Science Program, *The State of the Bay-Delta Science, 2008* (pages 147-150). (See Coalition comment letter to the Council dated June 9, 2010.)

Structural Comments

- The Council should correct the institutional deficiencies in the structure and management of the science program formerly known as CALFED. Policy should drive the science funded by the Delta Science Program without compromising the independence of the research.
- This means that resource managers should be involved in identifying needs for empirical research and monitoring.
- Agency personnel should not review and interpret their own empirical research.
- The Delta Science Program should draw on experience and knowledge from throughout the scientific community (not just those previously involved in Delta research) in order to promote an inclusive process and exchange of ideas through solicitation, proposals and funding of research activities.

Additional Comments

- Robust enforcement of existing laws -- including state laws pertaining to endangered species, lake and streambed alteration, water quality and water rights -- provides a logical starting point for the Interim Delta Plan. Under the Interim Delta Plan, state agencies should report to the Council on their enforcement responsibilities in the Delta.

- SWRCB flow criteria must be evaluated within the context of the many components that make up “habitat”, i.e. both the physical space in which animals or plants live and the abiotic and biotic resources in that space.
- Given the variation in habitat components among multiple species, using a single species to manage an entire ecosystem is an ineffective approach.
- Habitat needs of at-risk native fish should occur in the context of a broader ecosystem-management based approach.
- The Council should review and follow recommendations provided by the NRC in its report, *A Scientific Assessment of Alternatives for Reducing Water Management Effects on Threatened and Endangered Fishes in California’s Bay Delta* (2010).