



SENT VIA EMAIL

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Delta Stewardship Council
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Re: Executive Summary Comments

Dear Council Members:

The San Joaquin Tributaries Authority (“SJTA”) offers the following comments on the revised Executive Summary as announced at the Delta Stewardship Council’s (“DSC”) April 25, 2013 meeting. While the Executive Summary does not have regulatory status, it is still important; not all parties will become intimately familiar with the regulations, or the lengthy Delta Plan, but will only read the Executive Summary. Therefore, what is portrayed therein must not just be engaging to the reader, but also factually correct.

Legal Boundaries

The Executive Summary incorrectly sends the message that the Delta Plan has regulatory authority beyond the legal Delta. As the DSC and its staff are aware, the geographic boundaries of Delta Plan authority extend only to the legal Delta, anything beyond must be a recommendation.

For instance, on page 5 under the heading, “Providing a more reliable supply for California...,” the Executive Summary describes the upstream tributary use before arriving to the Delta. This suggests that the Delta Plan intends to manage water supply beyond the boundaries of the Delta. Anything beyond the legal geographic boundaries of the Delta must be a recommendation only. The Executive Summary must make this distinction clear to avoid confusion of the authority of the Delta Plan and the DSC.

On page 4, the Executive Summary describes two ecosystem themes that do not adequately express the range of actions necessary to restore the Delta ecosystem. Ecosystem theme #1 describes “mirroring historic rhythms;” this is an incomplete and inaccurate description. It is widely accepted that restoring the Delta ecosystem will require a range of actions including, but not limited to, pollutant reduction, elimination of non-native species and extensive channel management. As the Executive Summary reads now, the reader is left with the incorrect impression that the ecosystem theme of the Delta Plan is flow alone.

On page 6, the Executive Summary calls on “all water users” to “reduce their draw” from the Delta. This is not an accurate summary of the requirements of the Delta Plan or the Delta Restoration Act. The Executive Summary must be clarified to reflect that the DSC does not have authority over “all water users;” a covered action must first exist before the DSC, through the Delta Plan, has any consistency authority. Next, the DSC does not have authority to require the reduction of water use. The State Water Resources Control Board and state courts have concurrent jurisdiction over water right licenses and permits; the DSC does not have authority to unilaterally require a reduction or other change to such rights.

Further regarding the authority of the DSC, the statement that “the Council can function as a **regulator**” is incorrect on page 5. (Emphasis in original.) As the DSC heard from Alf Brandt, Legislative Director for Assemblyman Anthony Rendon and drafter of the 2009 Delta Reform Act Legislative Intent, at its April 25, 2013 meeting, the DSC does *not* have regulatory authority, rather it has “consistency” authority to ensure covered actions are consistent with the Delta Plan. This statement as drafted is therefore inaccurate and misleading, and should be revised to accurately reflect the authority of the DSC, particularly as discussed at its April 25, 2013 meeting.

Ambiguous and Imprecise Statements

The Delta Plan and its policies have undergone several series of revisions. Most recently, the policy regulations have been modified and are being prepared to be sent to the Office of Administrative Law. However, it appears the Executive Summary did not use the most recent Delta Plan policy language.

With regard to flow objectives set by the State Water Resources Control Board, the Executive Summary states that, “[t]he Delta Reform Act instructed the board to reconsider these flow levels, adopting binding new standards that will reflect a balancing of ecological with human needs” on page 7. It goes on to state that, pursuant to the Delta Plan Ecological Restoration Policy 1 (“ER P1”), the State Water Resources Control Board is to set flow objectives for major Delta tributaries and that the Delta Plan sets deadlines for these processes. This is incorrect; ER P1 no longer includes deadlines.

The Executive Summary should be reviewed and cross-referenced with the most recent versions of the Delta Plan and regulatory package to ensure accuracy and avoid confusion.

The SJTA requests that the DSC clarify the Executive Summary in accordance with these comments to provide for better clarity, consistency and accuracy.

Very truly yours,

O’LAUGHLIN & PARIS LLP



TIM O’LAUGHLIN

TO/tb

cc: San Joaquin Tributaries Authority