



DELTA STEWARDSHIP COUNCIL
A California State Agency

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April 16, 2013

The Honorable Lois Wolk
California State Senate
State Capitol, Room 5114
Sacramento, CA 95814

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Christopher M. Knopp

SB 735 (Wolk): Delta Reform Act of 2009: Covered Actions

Dear Senator Wolk:

On behalf of the Delta Stewardship Council (Council), we are writing to you to convey our serious concerns with SB 735. As introduced, the bill proposes to exempt large - and potentially limitless - categories of local activities from the newly established jurisdiction of the Council, contrary to the intent of the 2009 Delta Reform Act, and contrary to the achievement of the state's coequal goals. We understand you are considering amendments that would change the bill to exempt the approval of a locally-prepared Habitat Conservation Plan or Natural Communities Conservation Plan (HCP or NCCP) and conservation measures under these plans in the Delta from required consistency with the Council's Delta Plan. This letter also addresses our concerns with these more limited exemptions.

We recommend that you defer consideration of the bill until next year because:

1. As currently drafted the bill is in serious conflict with the Delta Reform Act of 2009.
2. The bill seeks to exempt all future local conservation plans, whatever their content, in advance of:
 - a. Final approval of the Delta Plan which will go into effect later this year; and
 - b. Completion of Yolo and Solano Counties' HCPs/NCCPs.
3. The draft Delta Plan already includes 'grandfather clause' language regarding San Joaquin and Eastern Contra Costa counties' completed HCP and NCCP.
4. In 2014 it is more likely that any potential conflict between the new HCPs/NCCPs and the approved Delta Plan would be known and could be addressed at that time.

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– CA Water Code §85054

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As you know, the Council was established by the Legislature in 2009 with the mission of developing and implementing a legally-enforceable plan to achieve the coequal goals. The coequal goals are the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

The Council has been working diligently for two years with state, federal, local and non-governmental parties and stakeholders in crafting the first-ever Delta Plan. After 8 public drafts, over one hundred public meetings, two circulations of an environmental impact report, and finally, now, the formal rulemaking process, the Council is scheduled to vote on adopting the final Delta Plan at its May 16/17, 2013 meeting.

The Legislature established the Council in recognition of a crisis in the state of the Delta ecosystem and the reliability of the state's water supply - both attributable in large part to the absence of coordination across disparate activities in the Delta - in an effort to ensure common efforts among state and local agencies to serve statewide and local interests. As written, SB 735 jeopardizes achievement of these goals.

The Legislature Required that Covered Actions Must Be Consistent with the Delta Plan

The Delta Reform Act requires state and local agencies to be consistent with the Council's Delta Plan when proposing a 'covered action' and sets forth specific criteria defining a covered action (Water Code Section 85057.5). Covered actions include "negative" actions that might harm the Delta. However, and equally important, some actions which may be desirable by themselves --- like habitat restoration and preservation activities --- can be made even more effective by integrating statewide and local planning efforts. These very types of projects are likely to occur under the auspices of locally prepared NCCPs or HCPs.

As a reminder, for state or local activity to be a covered action requires that it meet *all five* of the criteria outlined in law, including that it "will have a significant impact on the achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta." Not all activities under a local NCCP or HCP will meet these criteria.

The Council and its Roles in Promoting Science & Coordinating Restoration Efforts

State law directs the Council to regulate land use actions that meet the statutory definition of a covered action. Even more important, state law requires that the Council and its Delta Plan promote clear environmental values as part of that process including:

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- 1) Restoring viable populations of native resident and migratory species
- 2) Creating functional corridors for migratory species
- 3) Maintaining or enhancing diverse and biologically appropriate habitats and ecosystem processes
- 4) Reducing threats and stresses on the Delta ecosystem
- 5) The development of strategies to “restore large areas of interconnected habitats within the Delta and its watershed by 2100” and to use best available science to achieve these and other related objectives.

The ecology of the Delta is an extremely broad and complex series of interdependent systems. The Delta Reform Act and Delta Plan are foundationally based upon the use of best available science and specifically, an adaptive approach to understanding these systems. If SB 735 were to exclude eligible restoration projects from being covered actions under the law, the ‘burden’ of Delta Plan consistency that the bill sponsors allege may be lifted, but the adverse consequences to our ability to understand and fix the ecological issues of the Delta are potentially severe and permanent.

The Value of Coordination with the Delta Plan

Additionally, HCPs and NCCPs are specifically designed to contribute to the achievement of one of the coequal goals (ecosystem), but not both. Furthermore, they are not necessarily designed to be coordinated with other Delta-specific considerations such as:

- Water supply reliability (the other coequal goal)
- Flood risk reduction
- Protection of agriculture
- Economic sustainability of the broader Delta region

Absent coordination with the Council and the Delta Plan, major habitat actions or large-scale easements within local jurisdictions may conflict with planned setback levee projects or a floodplain bypass expansion to meet the state’s risk reduction goals or could prevent farming activities that can strengthen the regional economy. The as-yet completed local HCPs and NCCPs do not yet provide sufficient details for us to understand the full range or location of projects that would be exempted under SB 735.

In closing, the policies to achieve the coequal goals in the draft Delta Plan transcend the political and jurisdictional boundaries of local conservation plans. While local HCPs and NCCPs are important strategies to achieve ecosystem goals in the context of local planning needs, the Delta Plan was intended by the Legislature to provide a broad vision to achieve statewide goals in the Delta.

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It is my hope that our offices can continue to work together to address these concerns with the intent to achieve the best outcomes for the Delta and the state as a whole. Your staff may contact our Legislative and Policy Advisor, Jessica Pearson, at 916-445-0936.

Sincerely,



Phil Isenberg, Chair
Delta Stewardship Council



Randy Fiorini, Vice Chair
Delta Stewardship Council



Patrick Johnston, Council Member
Delta Stewardship Council



Association of California Water Agencies

Since 1910

Leadership • Advocacy • Information • Service

March 28, 2013

The Honorable Lois Wolk
California State Senate
State Capitol, Room 5114
Sacramento, CA 95814

Re: SB 735: Sacramento-San Joaquin Delta Reform Act of 2009: Covered Actions

Position: Oppose

Dear Senator Wolk:

On behalf of the Association of California Water Agencies (ACWA), I am writing to express ACWA's opposition to Senate Bill 735 relating to certain actions in the Sacramento-San Joaquin Delta.

Under existing law, which was enacted as part of the comprehensive legislative water package in 2009, the Delta Stewardship Council develops a "Delta Plan" to further the coequal goals of providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem. Existing law defines "covered action" and requires a state or local agency that proposes to undertake a covered action to prepare a written certification that shows how the covered action is consistent with the Delta Plan.

SB 735 would exclude from the definition of "covered action" the approval or implementation of a project which is a part of a larger conservation plan submitted pursuant to the Federal Endangered Species Act, a natural community conservation plan submitted pursuant to the Natural Community Conservation Planning Act (NCCPA), or certain permits related to the taking, importation, exportation, or sale of endangered or threatened species issued to specified entities located within certain counties.

The bill would exempt broad categories of activities from Delta Plan consistency determinations. ACWA understands that the exemptions sought by this bill are related to the fact that the conservation plans and permits go through formal environmental review processes outside of the DSC process. However, other projects that go through environmental reviews are treated as covered actions. At least until the Delta Plan is finalized and its ramifications are understood, we believe that the actions addressed by this bill should remain as covered actions.

For these reasons, ACWA opposes SB 735.

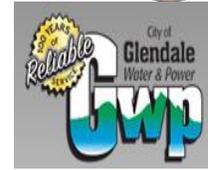
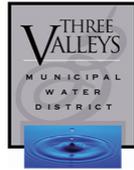
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Sincerely,

A handwritten signature in black ink that reads "Cindy Tuck". The signature is written in a cursive, flowing style.

Cindy Tuck
Deputy Executive Director for Government Relations

CT: rm



April 16, 2013

The Honorable Fran Pavley
California State Senate
State Capitol, Room 4035
Sacramento, CA 95814

Re: SB 735 (Wolk): Delta Reform Act of 2009 – **OPPOSE AS PROPOSED TO BE AMENDED**
Senate Natural Resources and Water Committee – April 23, 2013

Dear Senator Pavley:

On behalf of the agencies and signatories below, we regret to inform you of our collective **opposition** to SB 735 by Senator Lois Wolk. SB 735 proposes to facilitate certain and numerous activities in the Delta by exempting those actions from having to comply with the proposed Delta Plan.

In November 2009, the California Legislature passed a historic package of legislation to address the water supply and ecosystem challenges in the Sacramento-San Joaquin Delta as well as advance statewide water management reforms. Among the bills in the package was SB X7-1 by Senator Joseph Simitian which enacted the Sacramento-San Joaquin Delta Reform Act of 2009. SB X7-1 created, among other entities, the Delta Stewardship Council (Council), a new governing body for the estuary. The Council, which was formed in early 2010, is required to develop and adopt a comprehensive management plan for the Delta that furthers the co-equal goals of Delta ecosystem restoration and a reliable water supply.

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The Delta Stewardship Council is expected to complete and adopt its Delta Plan later this year. The “covered action” consistency process will start at that time. SB 735 is **premature** as no actions have been subject to the consistency determination process to date. The author seeks exemptions that are extremely broad and would undermine existing state policy designed to advance the co-equal goals of water supply reliability and ecosystem restoration.

The Delta Reform Act requires a state or local public agency that proposes to undertake a “covered action,” prior to initiating the covered action, to prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan. This consistency determination is filed with the Council. Once filed, any person who claims that a proposed covered action is inconsistent with the Delta Plan, and as a result of that inconsistency, believes the action will have a significant adverse impact on the achievement of one or both of the co-equal goals or implementation of government-sponsored flood control programs to reduce risks to people and facilities and property in the Delta, may file an appeal with the Council. The Council may dismiss the appeal, or hold a hearing and either deny the appeal or remand the matter to the state or local public agency for reconsideration.

We, the undersigned, have sought to protect the integrity of the 2009 Delta Reform package. The historic Delta package wisely chose to set an achievable and balanced set of state policies to restore this vital estuary and improve the reliability of water supplies if they are given a chance to succeed. For all of the above reasons, we must oppose SB 735 and urge your “NO” vote on the measure.

Sincerely,



Cindy Tuck, State Leg. Director
Association of California Water Agencies



Jim Barrett, General Manager
Coachella Valley Water District



Ron Davis, General Manager
Burbank Water and Power



Paul Jones II, P.E., General Manager
Eastern Municipal Water District

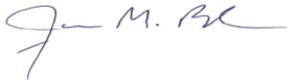


Valerie Nera
California Chamber of Commerce



Steve Zurn, General Manager
Glendale Water and Power

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James M. Beck, General Manager
Kern County Water Agency



Richard Atwater, Executive Director
Southern California Water Committee



Richard Hansen, Gen. Mgr/Chief Engineer
Three Valleys Municipal Water District



David W. Pederson, General Manager
Las Virgenes Municipal Water District



Gail Delihant
Western Growers Association



Jeff Kightlinger, General Manager
Metropolitan Water District of
Southern California



John Rossi, General Manager
Western Municipal Water District



Kirby Brill, General Manager
Mojave Water Agency



Edward P. Manning
KP Public Affairs
On behalf of Westlands Water District



Douglas D. Headrick, General Manager
San Bernardino Valley Municipal
Water District

cc: Members of the Senate Natural Resources and Water Committee
Dennis O'Connor, Consultant, Senate Natural Resources and Water Committee
Steve McCarthy, Consultant, Senate Republican Caucus
Senator Lois Wolk