



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

June 22, 2011

**Re: Comments on the Fourth Draft Delta Plan**

I am pleased to offer the following recommendations as the Council continues its work to prepare the Delta Plan. The Council is making significant progress toward a comprehensive and balanced plan, designed to achieve the co-equal goals and implement the Council's legislative mandate.

In addition to reviewing the fourth draft plan, we have also reviewed the June 10 Association of California Water Agencies (ACWA) proposal. The recommendations below include several of areas where we have found significant common ground with the recommendations in the ACWA document. Many ACWA recommendations suggest approaches that are different from recommendations in the current draft. I will respond only to one of these suggestions.

ACWA has recommended that the Council pursue MOA's with key federal agencies (ACWA, p. 13), rather than a focus on a CSMA-style consistency program. We believe that the legislature wisely selected a carefully balanced consistency requirement designed to ensure accountability in the implementation of the Delta Plan. In fact, this approach was developed in response to recommendations from the Delta Vision Task Force and the Little Hoover Commission, both of which rejected the narrow focus on voluntary MOA-based agreements utilized in the CALFED program.

In its review of CALFED, for example, the Little Hoover Commission concluded that "(i)t is not clear who is responsible – or accountable – for the success or failure of CALFED, and for orchestrating the efforts of state and federal implementing agencies" ("Still Imperiled, Still Important, Little Hoover Commission, p. 53.) To address this problem, the Little Hoover Commission specifically recommended that "(t)he California Bay-Delta Authority as a coordinating entity should be replaced by a leadership structure that has the authority to accomplish CALFED's mission." ("Still Imperiled, Still Important", p. vi.) We urge the Council to maintain its focus on the

consistency program established in SB 7X 1 to provide clear authority and accountability in the implementation of the Delta Plan.

We further recommend the following additions and amendments to the current draft.

### **Adaptive Management (Chapter 2)**

Proposal: Insert the following text, at the end of line 37, on page 26.

“Goals and objectives related to specific elements of the Delta Plan should be developed separately through focused processes involving highly respected independent scientists and experts. For example, ecosystem restoration goals and objectives should be developed by independent biologists and experts with related expertise.”

*Rationale*: The draft plan appropriately recognizes that quantifiable goals and objectives based on the best available science are essential to the success of an adaptive management program, particularly in a system as complex as the Bay-Delta. The draft plan should be revised to recommend that these goals and objectives should be developed through the involvement of recognized, independent experts through processes targeted to take advantage of that expertise. For example, biological expertise is required to develop ecosystem goals and objectives. On the other hand, developing goals and objectives regarding efforts to reduce risks to the Delta will require very different expertise. The ACWA alternative also has a proposal to involve experts in the development of metrics for the DSC program (pg. 7.)

Proposal: Insert the following language at the end of line 31 on page 30”

The analysis, synthesis and evaluation of monitoring results should be designed to rely upon independent scientists and experts.

*Rationale*: The draft currently recommends that results be published in peer-reviewed journals. It should also explicitly encourage the participation of independent experts in the analysis of the performance of elements of the Delta Plan.

Proposal: On page 36, replace the sentence beginning on line 17 with the following language.

“Decisions made within the adaptive management process for ecosystem restoration should be made by the state and federal agencies responsible for protecting fish and wildlife resources.”

*Rationale*: The Delta Plan should provide clear recommendations regarding effective governance of the implementation of adaptive management in Delta ecosystem restoration efforts. To ensure the integration of the best available science and the achievement of ecosystem restoration objectives, adaptive management decisions

should be made by fishery protection agencies. Recent experience has provided a failed experiment in allowing the state and federal water projects to veto fishery protection measures. Specifically, the previous biological opinions in the Delta allowed the water projects to block science-based protections through the Water Operations Management Team. Not only was this structure ineffective in protecting the environment, it was also invalidated by a federal court. An approach similar to the WOMT structure would conflict with the achievement of the co-equal goals.

#### **A More Reliable Water Supply for California (Chapter 4)**

Proposal - Conveyance: Insert the following new storage and conveyance policy at line 23 on page 69.

- Efforts to provide improved conveyance in the Delta should focus on improving the reliability and predictability of water supplies from the Delta, rather than focusing on increasing Delta diversions.

Proposal – Performance Measures: Insert the following new outcome performance measures on page 77.

- Progress toward reducing the vulnerability of Delta supplies to disruption from earthquakes, floods and sea level rise.
- Progress toward improving the resilience of Delta supplies, in the event of disruption.
- Progress toward increasing the predictability of water supplies from the Delta in a variety of year types.

*Rationale*: As the draft plan indicates, the legislature established improving water supply reliability as a co-equal goal and established a policy of reducing reliance on the Delta. Specifically, the legislature focused on improving the “reliability” of supplies from the Delta. It did not mandate an increase in diversions or maintaining a particular level of diversions. Quite the contrary, the legislature established a policy of reducing reliance on the Delta. Council staff has provided guidance regarding this issue (November 15, 2010 letter from Joe Grindstaff to Byron Buck.) The Delta Plan should include policies, recommendations and performance measures that define these terms clearly. The above two proposals are designed to achieve this end.

Proposal – Reducing Reliance on the Delta. Add the following new policy language to WR P2 at line 25.

- **Volumetric Pricing of Wastewater**. The establishment, where not in place today, of volumetric pricing of sanitary sewer service.

*Rationale* - Volumetric pricing of sanitary sewer service is standard practice in much of

the nation. Such a rate structure links wastewater charges to interior water use by pegging sewer fees to wet season or winter water use. California, however, has an unusually high share of households (70%) that receive sanitary sewer service through flat, non-volumetric rates. Sewer bills are often as large as water bills, but flat sewer rates fail to reward customers that conserve water. NRDC estimates potential savings of 300,000 acre-feet statewide from adoption of this policy.

Proposal – Reducing Reliance on the Delta: Insert the following new recommendations for state agencies on page 65.

- The State Water Resources Control Board should develop an operational definition of water “waste” that can establish a contemporary floor for acceptable water management by agricultural and urban water users.
- The State Water Resources Control Board should develop regulations that allow for non-potable indoor use of captured rainwater.
- State agencies should take a leadership role in designing new and retrofitted state owned and leased facilities, including buildings and Caltrans facilities, to reduce reliance on the Delta. These efforts should include, as appropriate, the strategies discussed in WR P2. New and redesigned Caltrans facilities, in particular, should incorporate stormwater capture and low impact development strategies.
- The Department of Public Health should adopt, pursuant to SB 918 (2010), uniform water recycling criteria for indirect potable reuse for groundwater recharge by Dec. 31, 2013. The Department should also develop and adopt uniform water recycling criteria for surface water augmentation by Dec. 31, 2016, if an expert panel convened pursuant to the bill finds that the criteria would adequately protect public health.

*Rationale:* WR P2 includes policies applicable to water agencies. The plan should also include recommendations for state agency actions regarding regulatory programs and the design and management of state facilities to contribute to a more reliable water supply and reduced reliance on the Delta.

Proposal – Groundwater: Include the following language at the end of WR R6 on page 72.

- This update should also include the following information and analysis:
- An analysis of the likely state of California groundwater resources in 25 years if current groundwater trends and management remain unchanged.
  - The anticipated impacts of climate change on groundwater resources.
  - Identification of innovative practices at the local and regional levels.
  - An updated analysis of the current state role in groundwater management.

- Recommendations for further improvements to local and regional management.
- Recommendations for state agencies and the legislature.

*Rationale:* This is another area where we have common ground with ACWA (ACWA, p. 21). Bulletin 118 is dramatically out of date. For example, estimates of overdraft were based in significant part on data from 1980. An updated and comprehensive document could play a significant role in strengthening regional water management.

Proposal - Conveyance: Insert the following new conveyance recommendation at line 23 on page 69.

- Direct DWR to undertake an assessment and review of the levee infrastructure critical to the current through Delta conveyance of export water supplies and to the protection of contractual and regulatory in-Delta water quality and quantity mandates and to develop a preventative maintenance program to enhance the resiliency of those levees.

*Rationale:* This recommendation is based on a recommendation in the ACWA proposal (ACWA, p. 20). We believe that this action could significantly improve the reliability of existing Delta supplies, and contribute to other components of the Delta Plan, such as reducing risks to the Delta.

### **Delta as an Evolving Place (Chapter 8)**

Proposal: We recommend that the Council include specific recommendations designed to encourage appropriate land use decisions in key areas of the Delta. The Delta Vision Strategic Plan's strategy 6.2 includes detailed land use recommendations that we recommend be included in the Delta Plan.

*Rationale:* The fourth draft contains no policies and only one narrow recommendation regarding Delta land use issues (p. 160). The Delta Vision Strategic plan identified Delta land use issues as a key issue. It was also identified as a key issue in SB 7X 7.

### **Finance (Chapter 9)**

Proposal: Include the following new recommendation on page 174.

#### **Minimum Investment Requirement**

Establish a minimum investment requirement for water agency investments in water supply strategies designed to reduce reliance on the Delta. The Legislature should create a minimum investment requirement for water agencies, modeled after the energy loading order and the efficiency component of the energy public goods charge. This requirement could reduce the size of future water bonds and create a funding stream for investments by urban and agricultural agencies. Control of these

funds should remain with local agencies, rather than being collected by and controlled by the state. These funds should be invested in the investment strategies to reduce reliance on the Delta discussed in WR P2.

*Rationale:* The draft plan includes a list of tools that are designed to reduce reliance on the Delta. This recommendation is designed to create a financing mechanism to support these investments by all California water agencies. Such a minimum investment requirement should be designed to establish a floor for investment levels in strategies that reduce reliance on the Delta. This recommendation is analogous to the energy loading order. For leading water agencies, which are already making substantial investments in efficiency and other tools, this proposal would create a reporting requirement, but would not mandate additional investments. It is important to note that, by providing that these funds remain in the control of local agencies, rather than the state, this proposal is quite different from the Resource Investment Fund that was rejected by the legislature.

Thank you for considering our views. We look forward to continuing to work with you as you continue the development of the Delta Plan.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barry Nelson', with a long horizontal flourish extending to the right.

Barry Nelson  
Senior Policy Analyst