



**State & Federal Contractors
Water Agency**

1121 L Street, Suite 1045, Sacramento, CA 95814

June 24, 2011

Chairman Isenberg and Council Members
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: State and Federal Contractors Water Agency comments
Fourth Draft Delta Plan

Dear Chairman Isenberg and Council Members:

The State and Federal Contractors Water Agency (SFCWA) appreciates the opportunity to comment on the Fourth Draft Delta Plan (Delta Plan), dated June 13, 2011. We once again commend the Council's staff for its obvious level of effort to produce these drafts on a timely basis. We are pleased that in many respects this draft represents an improvement from the Third Draft Delta Plan and we are gratified that many suggestions for improvements from many stakeholders, including ourselves, were incorporated in this latest version of the Delta Plan. We particularly recognize the new "Appendix A", which attempts to provide some clarity with regard to the Council's view of its relationship to the Bay Delta Conservation Plan (BDCP). However, as we will describe below in our overall comments and then with specific editorial comments and suggested wording changes, the Delta Plan still contains some significant flaws in approach, expectations, acknowledgement and understanding of the State Water Resources Control Board's (SWRCB or Board) processes, and continued overreach with regard to "covered actions" and the asserted regulatory authority of the Council.

Improvement in Water Supply Reliability - Perhaps the biggest (and arguably fatal legal) flaw of the draft Delta Plan is that the water supply reliability coequal goal is characterized in the context of a zero-sum approach. The Council manifests this viewpoint unnecessarily and without substantiation through statements that more water should be reallocated to environmental/flow purposes, which are fundamentally contrary to the improve water supply reliability coequal goal. The position seems to be that investment in local resources is the only method of "improving statewide water supply reliability" while simultaneously (and certainly counter-intuitively) advocating reducing exports from a present-day baseline. Water supply reliability to meet the standard set forth in section 85302(d) of the Act cannot be defined as the export contractors receiving less water than currently available to meet present demands. This would result in disinvestment in the Delta. The discussion of water supply reliability in the Delta Plan needs to be recalibrated to reflect an effort to increase the availability of supplies transferred through the Delta at times and in manners which are more environmentally benign, which, in turn allows relatively less to be diverted during dry periods. This involves more than promoting local resource development via insertion of the Council's "covered action" consistency authority into local

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resource development matters. Instead, the Plan needs to express the need to improve reliability and the long-term average amount of exports available from the Delta system compared to today's levels; while recognizing that all project operations will be regulated by the Board to meet appropriate public trust, Constitutional, and coequal goal requirements. Concurrent with investment in better conveyance and addressing all ecosystem stressors, both parts of the coequal goal can thus be met.

We encourage and request a specific statement in the Delta Plan with regard to how the Council views improvements in water supply and water supply reliability intended to be achieved through the implementation of the Bay Delta Conservation Plan (BDCP). The Act is quite clear that the BDCP, and its water management benefits – for both the environment and water supply – was considered by the Legislature to be an important and integral component of an effective Delta Plan, should it satisfy the requirements for incorporation in section 85320. It would be illogical for the Act to include such direction if the Legislature also believed the BDCP somehow be inconsistent with the Delta Plan, the coequal goals, or the policy enumerated in section 85021 to “reduce reliance on the Delta in meeting California’s future water supply needs.” To ensure no ambiguity, we provide the following suggested language and request the Council include it in the Delta Plan as part of its discussion of baselines related to “performance measures” in Chapter 4. At page 75, after line 17, add:

Consistent with legislative direction to incorporate the Bay Delta Conservation Plan (BDCP) into the Delta Plan pursuant to section 85320 of the Act, the Council has determined that the baseline for measuring progress toward reducing reliance on the Delta to meet California’s future water supply needs relative to SWP and CVP export levels will be established by their operations and modeled long-term average deliveries in compliance with state and federal regulatory standards and requirements applicable upon initiation of operation of new Delta conveyance facilities included as part of the BDCP.

The draft Delta Plan’s discussion of water demand seems to champion the view that future statewide water demands will be reduced from present levels. While fine as an aspirational goal, no analytical foundation is provided to assess whether it is realistic. As one example, Figure 4-5 on page 61 shows aggregate water use declining. This reflects a reduction in agricultural water use, not urban use which is still trending slightly upward, and also likely reflects drought conditions and fallowing of acreage. . Though agricultural acreage may be trending downward, climate change is expected to necessitate additional water applications to crops to compensate for loss of soil moisture, reduced precipitation, ambient temperature increases, etc. In addition, urban demands will increase in the future, though those increased demands will largely be met through increased water use efficiency measures, conservation and local resource development and thus total use is unlikely to change significantly.

Role of the SWRCB with regard to flows - Another area where we have concerns is the Delta Plan’s repeated misuse of terminology related to the SWRCB’s processes, as well as the unrealistic timeline expectations for the Board to complete some of its activities. The Delta Plan inappropriately conflates “flow” with “objectives” and “criteria” on numerous occasions when describing what the Board will be “developing” or “adopting” or “implementing”. The Board will be reviewing and potentially updating its Water Quality Control Plan for the Bay-Delta, and at the end of that process will consider whether and how to issue revised water quality objectives and related flow requirements. Developing operating criteria applicable to diversions within the watershed is an implementation strategy for achievement of water quality objectives, and this particular tool implicates “flow” management. We strongly encourage the Delta Plan to be reworked so the correct terminology and description of the Board’s processes is accurate throughout the document. This also applies to the timeline expectations. It should be clear that the Board will be reviewing its WQCP in the near term to reflect the initial implementation of the

BDCP, and will need to revise it prior to issuing operational permits for new conveyance that is not expected to be operational for a decade or more. This two-step approach needs to be reflected in the Delta Plan and its timeline expectations, which means that the present January 1, 2014 date for “adoption and implementation” of new standards is unlikely to be met and we suggest further consultation with the Board and the BDCP’s management committee to ascertain the proper timelines.

BDCP as a Package of Actions - The Council’s assertion on page 48 [Lines 19-22] that consistency certifications would be required for actions undertaken pursuant to the BDCP after its incorporation into the Delta Plan could result in “selective” incorporation of BDCP projects and consequently is quite troubling. The first sentence imposes a superfluous requirement not contained in, and inconsistent with, the Act. The second sentence is beyond the Council’s authority. If the BDCP is incorporated into the Delta Plan consistent with the Act, then all of its activities are by definition consistent with the Delta Plan. The Council does not have the authority to regulate or reject parts of the BDCP after its incorporation into the Delta Plan. As an NCCP/HCP the BDCP is a comprehensive package of actions, commitments and assurances approved by state and federal fishery agencies that cannot be cannibalized or pulled apart.

Regulatory Approach and Consideration of Covered Actions - We still believe the asserted ability to bootstrap local water management decisions far removed from the Delta into the Council’s “covered action” jurisdiction is unfounded and “policy A” on page 62 [L 35-37] should be deleted. This “covered action” “trigger” is rife with problems of vagueness and overreach. Does “export of water” mean any movement of water by the SWP or CVP under current contracts and biological opinions? The same question applies to transfers. Such operations are certainly “routine” and excluded from being subject to “covered action” consistency review by the Act itself. Moreover, regulation of such operations is reserved to the Board exclusively by the Act. Even if such a “policy” were appropriate, what is the definition of “significantly caused by”? As written, an SWP or CVP contractor who is a wholesale agency could be charged with pursuing an “inconsistent” action based upon the deficiencies of one of its (potentially many) member agencies, over which it has no control. In attempting to impose a “forcing mechanism”, the Delta Plan here goes too far. This criticism also applies to WR R10 on page 74 related to SWP contracts, which should also be deleted.

The requirement that the proposed new Water Reliability Element “document actual or projected net reduction in reliance on Delta exports” on page 63 [L 25-26] is inappropriate. That is not what the Act requires. Instead, the statute specifies reduced reliance in meeting *future* water supply needs which is very different than an “actual...net reduction” from current levels. Reduction in **reliance** on Delta exports will be accomplished through increased local water resource development. If the intent is to require a showing of meeting ordinary existing demands while receiving less imported supplies than under a successfully implemented BDCP, that would be inconsistent with the Act and the coequal goals.

The Council needs to clarify that the “regional water balance” sought on page 64 would include a region’s imported water supplies. If that is not the intent, most regions of the state would never succeed in bringing their “region into balance”. It must be the demand within the hydrologic region that is the criterion focusing the analysis, but the balance “inputs” cannot be limited to water supply solely available within that hydrologic region. The latter point needs to be clearly stated.

The Council needs to define what it means by a rate structure that “sustainably encourages and supports water conservation” [P 64, L 26-29]. Moreover, are these rate structure recommendations intended to apply to wholesalers? They should not. Wholesalers have different financial requirements

than retailers and are at least one step removed from direct interaction with the end-user where price functions apply. The question of applicability also applies with regard to agricultural water districts. How would such a hypothetical rate structure be applied? Volumetrically or based on utilization of WUE technologies or..? This recommendation needs much more thought and clarification. The footnoted description from Utah, though helpful, contains many vague terms and concepts triggering more questions than they answer.

WR R3 on page 65 [L 13-16] is problematic at best. In the first place, a new diversion point does not necessarily result in or reflect new or increased demand for water; it may instead be a response to water management and operational needs to serve a distinct geographic location with existing supplies, or even potentially serve environmental uses. Secondly, from what baseline is “new or increased demand for diversions” measured? If the new point of delivery is receiving water under current contract entitlements and consistent with regulatory requirements, will the Council consider that to be “inconsistent” under this proposed recommendation? If that is the Council’s view, it is inconsistent with the Act. More clarity, specificity and examples are needed here to understand the Council’s intentions.

Strategic Levee Investment Strategy - The Delta Plan’s discussion of flood protection is somewhat lacking. A major deficiency is that the Council has not satisfied the Act’s direction under section 85306 for it to include in the Delta Plan its own recommendations for a strategic levee investment strategy. Instead, the Council has punted on this long overdue and critical input to planning for the Delta. In addition, the 4th Delta Plan does not recognize that economically based risk reduction analyses need to be performed on an island- by- island basis and that levee policies for the eventual conversion of some islands to habitat have to be developed before major investments are made in levee improvements. This would, of course, be central to priority setting as part of the development of a strategic levee investment strategy to further the achievement of the coequal goals. The Delta Plan does not recognize that habitat restoration land costs will be higher and there will be significantly higher potential stranded costs if plans and policies coordinating restoration with levees are not developed as an initial step. The Delta Plan has also not recognized the need to evaluate subsidence costs, the existing DWR emergency response efforts nor the “Pathway” program in the Emergency Preparedness chapter. These issues need to be rectified in the next draft.

In addition to the overarching comments we have provided above, we also have reviewed the text in order to provide specific detailed edits, and we are providing those in Attachment 1. We strongly encourage that the council or its staff consider reviewing each of these sets of comments with us in order to assure that their intent is fully understood and that they are not unintentionally or arbitrarily rejected.

We appreciate the opportunity to comment and look forward to continued participation in Plan development.

Sincerely,



Byron M. Buck
Executive Director

Attachment A

Specific Editorial Comments:

P iv L15: “Creating a More Natural Flow Regime” should be replaced with something like “Creating a More Variable Flow Regime to Improve Ecosystem Performance” or “Increase Variability in Flow Management to Improve Ecosystem Function”. This should be a substitution made throughout the document. It is not as elegant perhaps, but it more accurately captures the intent of the activity, focuses on the key criterion (i.e. variability), and doesn’t imply an effort to return to an unattainable, hypothesized condition that would preclude achievement of the coequal goals. The intent is to focus on trying to manage flows in a manner to more closely mimic pre-development peaks and valleys of the hydrograph (though their amplitude will generally not be the same), taking into account the numerous other factors involved in optimizing the benefits of such management choices.

P 3 L 8: **delete** “seeming”. These were, and still are, comparatively areas of water abundance. It is understood Area of Origin protections are not affected by the Delta Reform Act.

P 3 L 10: **delete** “during dry times”. Though it is a true statement, it implies such supplies were only needed during “dry” times, when in fact those supplies are necessary all the time and in some places represent essentially the only water supplies available.

P 3 L 17: **delete** “—and abused”. This is gratuitous, untrue, and has no place in this document.

P 3 L 22: **add** at the end of the sentence “...society, [while maintaining its central role in ensuring water supply reliability for the State.](#)”

P 4 L 1: As commented on before, the Delta Plan, in itself, will not “achieve” the coequal goals. Generally, the terminology should be “further the achievement of the coequal goals.” This should be a change reflected throughout the document.

P 4 L 6-7: **delete** “ignored” and change sentence to read “...in decline [cannot be left unresolved much longer without significant consequence to the interests of all Californians.](#)” The word “ignored” itself ignores the significant and costly efforts that have been expended on addressing Delta issues over the last decades.

P 4 L 10: **delete** or replace the inaccurate language “to achieve those goals”. The statutory language requires a Delta Plan “that *further*s the co-equal goals (Section 85300(a)). As noted above, the Delta Plan itself will not, and the Legislature did not expect it to, “achieve” the coequal goals and hence the wording should be changed. In this instance, the problem is also that the sentence reads as if the goals are required to actually be achieved by January 1, 2012, rather than simply the completion and adoption of the Delta Plan by that date.

P 4 L 18: it should be “[an](#) historical” not “**a** historical”.

P 4 L 43-44: once again, the Delta is not the source of export water supplies. In addition, because the bullet only references dependence on “Delta water exports”, it seemingly excludes the diversions from

the watershed itself that bypass the Delta altogether, i.e. SFPUC and EBMUD. This should be corrected. We suggest the following construct instead: “The Delta watershed provides water for millions of Californians. ~~it is not California’s dominant water supply.~~ Though some water users are entirely dependent on water conveyed through and exported from the Delta or diverted from the watershed upstream, or exported from, but most use...”

P 5 L 1-2: “only for a portion” implies imported supplies are of minimal consequence. This is false and misleading. We suggest the following language instead: “...supplies and depend on Delta imported water for only a portion as an important component of their overall water supply portfolio.” ~~Delete~~ “Therefore,” ~~add~~ “to further diversify”.

P 5 L 6: ~~add~~ at end of sentence, “...the Delta to meet future water supply needs.”

P 5 L 10: ~~add~~ “...improved reliability of Delta water, to recover lost export capability through enhanced operational flexibility and ~~to make~~ historic investments in the Delta ecosystem...” The BDCP is not just about “reliability” but also about increasing export capability consistent with regulatory prescriptions and the coequal goal.

P 5 L 14-20: The SWRCB reviews and updates its “Water Quality Control Plan” which includes “water quality objectives” and “flow requirements”. “Flow” is a tool the Board can use in developing an implementation plan to try to achieve the water quality objectives. However, “flow” alterations implicate water rights and thus entail a “water rights proceeding” to actually implement such a “flow” component. This entire issue is, as the Council has appropriately stated, within the purview of the Board. Consequently, in addition to getting the wording correct in the first sentence, we suggest ~~deleting the 2nd and 3rd sentences altogether~~. In addition, the statute does not call on the Board to do anything with regard to “high-priority tributaries” other than undertake “studies”; there is no call or deadline for producing new “objectives” or other regulatory action in relation to those streams, consequently the Delta Plan should not imply otherwise.

P 5 L 21: ~~delete~~ “suffered from” and ~~replace~~ with “been transformed by”.

P 5 L 28: ~~replace~~ “the natural flow regime” with “more variable flow management” or newly developed language per discussion provided at the beginning of these comments above.

P 5 L 45-46: ~~revise~~ “...includes strategies to preserve the Delta’s ~~current~~ rural and agricultural base, consistent with the coequal goals.”

P 9 L 5: ~~delete~~ “implement” ~~add~~ “commence implementation”, which is the wording of the Act.

P 10 L: ~~add~~ “...water supply system.” The Delta is not the source of the water.

P 10 L 25: ~~revise~~ “~~Reduced Altered~~ freshwater flows into the Delta, water pumping facilities in the southern Delta exporting water from the Delta,....” The flows are not “reduced” at all times, the water exported is not “Delta” water.

P 11 L 4: ~~add~~ “...consumptive use and upstream and in-Delta diversions of water...” -- to provide more comprehensive specificity.

P 11 L 38-39: **revise** "...water supplies ~~from~~ conveyed through the Delta has grown at the same time the reliability of water those supplies ~~from the Delta~~ has been deteriorating ~~begun to deteriorate.~~" The water is not "from" the Delta and reliability has been deteriorating for awhile now.

P 11 L 45-47: **Replace** the first two sentences with the following "Assessing statewide water supply reliability is hindered by the fact that California has an unwieldy data and information gathering system that may not be asking for the right data and after receiving responses does not aggregate them in a manner useful to water managers and policy makers. For example, since 1914..." The current language wrongly implies (1) that there is some fixed end-point that rings the bell on "achieving" statewide water supply reliability, when it is a year-to-year measure in reality that is highly dependent on the variable and uncontrollable weather; and (2) some statistic related to "annual statewide water use" would "inform" statewide decisions on water supply management made by "California's water managers" – this doesn't reflect the reality of California's decentralized water system nor, as with (1), the variability of the weather which precludes "decisions" with sufficient certainty well into the water year.

P 13 L 1-2: SWRCB terminology should be modified, as noted above, "flow criteria" and "flow objectives" are not appropriate.

P 15 L 6: Repeat of comment on previous draft. What is rationale of "50 percent" reduction in "urban per capita water use"? This sentence should be **deleted**. The first sentence is more than adequate to make the point without pulling a number out of thin air which has no substantiation. If necessary, include something along the lines of "urban per capita water use statewide has continued to trend downward from the 20x2020 baseline."

P 15 L 18: **replace** "sufficient" with "appropriate" and **replace** "natural" with "variable". Use of "hydrograph" rather than "flow regime" is an improvement.

P 19 L 18: **replace** "requires" with "recommends" as the Council does not have the authority to "require" in this context.

P 33 L 14: **add** at the end of the sentence, "as outlined below." This is particularly useful with regard to the reference to the State of Washington which seems to come out of nowhere. In addition, perhaps a brief sentence explaining why the criteria developed by the State of Washington are appropriate would be in order.

P 34 L 10-11: The Delta Science Program should also be reviewing current research activities and recommending whether they remain pertinent and worthy of continuation or whether the resources would be better spent elsewhere in service of the coequal goals. This should be listed as an explicit task of the DSP and the ISB.

P 35 L 35: The discussion of the Delta Science Plan here at the end of the chapter makes it come across as a bit of an afterthought when it is central to the success of the Delta Plan. It seems like it should be moved up in the chapter.

P 35 L 36: **add** "...needed to prioritize, organize and integrate...."

P 35 L 42: **add** "...is to prioritize and organize Delta science activities...."

P 44 L 8 and note 7: We appreciate that on page 45 one year temporary water transfers are granted an exemption from being a “covered action”. However, the correct statutory interpretation is that a project exempt from CEQA also is excluded from the definition of a covered action. In recognition of this fact, and at a minimum, instead of making CEQA exempted projects subject to “covered action” consistency determinations, the Council should review CEQA exemption categories and decide in a public forum which should not be exempted from “covered action” consistency analyses, provide the rationale for not doing so, and exempt all the other activities that are similarly exempt from CEQA. At the very least, perhaps identify such a CEQA exemption review as an early priority of the “adaptive management” approach described at page 45, lines 11-13.

P 45 L 40-41: We find the need for a certification analysis of “an action [] taken in conformance with another plan that has been incorporated into the Delta Plan” to be superfluous and wasteful of time, labor and financial resources of project proponents, as well as an unnecessary burden on the limited administrative capacity of the Council. If an action is part of a plan that has become part of the Delta Plan, how could it be “inconsistent” with the Delta Plan, of which it is itself a part?

P 48 L 19-22: **Delete** this entire paragraph. The first sentence imposes a superfluous requirement that is inconsistent with the statute. The second sentence is beyond the Council’s authority. Once again, if the BDCP is incorporated into the Delta Plan consistent with the Act, then all of its activities are by definition consistent with the Delta Plan. The Council does not have the authority to burrow into the BDCP after its incorporation into the Delta Plan and pick and choose actions to “review”. As an NCCP/HCP the BDCP is a comprehensive package of actions, commitments and assurances approved by the state and federal fishery agencies that cannot be cannibalized.

P 52: text prior to section 85021 citation, **add** “...for water supplies to meet future needs is established...”

P 52: It is section 85302(d) not (c) that sets out the Act’s criteria for addressing a more reliable water supply for California.

P 53: This is an example of Council documents inappropriately and selectively quoting the Constitution. Any citation to Section 2 of Article X should always include the first sentence of Section 2 too. **Add** > “It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water...” The principle of “reasonable use” includes the principle of “use” not just preventing “waste”, and as such the opening sentence of the Constitutional provision should be included as well.

P 55 L 33: **revise** “...watersheds, **primarily diverting it at** divert it into storage; utilize the rivers to deliver it to the Delta where it flows to pumping facilities in the south Delta...” Project water is diverted far upstream from the Delta.

P 56 Water Supply Reliability box: first line of 5th paragraph: **add** “decreasing the statewide per capita demand for water...” As written it seems the expectation is that a statewide aggregate water demand reduction from a present-day baseline is “necessary”. This is not the case and is not consistent with Section 85302(d).

P 56 Water Supply Reliability box: first line of 7th paragraph: add "...that the amount of water available from the Delta through the [delivery capabilities of the SWP and federal CVP](#) must be made more reliable." Because the next sentence relates the first sentence to the BDCP it is appropriate to specify the SWP/CVP capability. Alternatively, the word "watershed" could be inserted after the word "Delta" in the original sentence.

P 56 Water Supply Reliability Box, second to last line: delete "reduce its water needs" and replace with "[continuously improve its water use efficiency and conservation efforts](#), develop..."

P 57 L 9: What are "local imported deliveries"? Is that EBMUD, SFPUC and LA Aqueduct? This should specify.

P 58 L 8: Figure 4 – 2 > the pie chart showing water supplies obfuscates the role of Delta and Delta watershed supplies. These should be shown as a single slice. If shown, it would be clear that this is the single largest water supply for California.

P 59 L 4: add "...reliability [of California's...](#)"

P 60 Figure 4-4: This graphic is misleading and should be deleted. Although it is from the 2009 Water Plan, the data reflected by the individual bars on the chart were not gathered utilizing the same assumptions as to level of effort informing the "high" and "low" estimates.

P 61 L 12: The reference to \$1 billion of State bond fund investment should also reference how much in local (and possibly federal) resource dollars were leveraged by those bond funds to provide a more robust picture of the level of investment that has occurred.

P 61 L 14: Delete "reduce demand" replace with "[increase water use efficiency](#)". While aggregate water use shows a decline on the chart, which reflects a reduction in agricultural water use, not urban, which is still trending slightly upward and also likely reflects drought conditions, crop shifting and fallowing of acreage. Absent an analytical basis to support it, there should be no assumption that California's future is a place where aggregate water demands will be less than today. Today's data and trends simply do not support this notion. Though agricultural acreage may be trending downward, climate change is expected to necessitate additional water applications to crops to compensate for loss of soil moisture, reduced precipitation, ambient temperature increases, etc.

P 62 L 2: add the following sentence to the end of the paragraph; "[However, as in other areas that rely upon imported water, this ability to meet future demands assumes the continued delivery of those imported supplies, which are foundational to their water supply portfolios and support the ability in particular, to recycle water for additional use and store surplus water in groundwater basins for future use.](#)"

P 62 L 16: add "...reduced reliance on the Delta [to meet California's future water supply needs.](#)"

P 62 L 27-30: delete "demonstrate reasonable use of existing water supplies and"; this verbiage is loaded, a term of art, and adds nothing other than controversy. This language implies support for a top-down, intrusive approach for second-guessing local decision makers and the investments they make or don't make and a one-size-fits-all mentality.

P 62 L 35-40: **delete** paragraphs “A” and “B”. These “covered action” triggers are rife with problems of vagueness, overreach and consistency. Does “export of water” mean any movement of water by the SWP or CVP under current contracts and biological opinions? The same question applies to transfers. Such operations are certainly “routine” and excluded from “covered action” consistency review by the Delta Reform Act itself, let alone such activities are within the purview of the SWRCB and thus regulation of them is reserved to the Board exclusively by the Act. Even if such a “policy” were appropriate, what is the definition of “significantly caused by”? As written, an SWP or CVP contractor who is a wholesale agency could be charged with pursuing an “inconsistent” action based upon the deficiencies of one of its potential many member agencies, over which it has no control. These covered actions are also inconsistent and discriminatory in that they apply only to a subset of diversions (17% on average) from the watershed.

P 63 L 24: **add** “...dependence on the Delta [to meet future water supply needs](#) through...”

P 63 L 25-26: phrase “document actual or projected net reduction in reliance on Delta exports” is troublesome. The Council should provide an example of how they think this recommendation would be satisfied and from what baseline it would be measured. If the intent is to require a showing of meeting ordinary demands while receiving less imported supplies than under a successfully implemented BDCP, that would be inconsistent with the Act and the coequal goals.

P 63 L 28: **delete** “a minimum periods of”.

P 64 L 5: **add** “...Delta [to meet future water supply needs](#), including, but not limited....”

P 64 L 15: This discussion of “regional water balance” should explicitly clarify that a region’s imported water supplies are included in the analysis. If not, most regions of the state would never succeed in bringing “the region into balance”. It is the demand within the hydrologic region that is the criterion focusing the analysis, but the balance inputs are not limited to water supply solely available within that hydrologic region. The latter point needs to be clearly stated.

P 64 L 25 and 28: What does a “conservation-oriented rate structure” that “sustainably encourages and supports water conservation” mean? Moreover, are these rate structure recommendations intended to apply to wholesalers? They should not. If they are, the Council needs to provide a rationale why they should apply to wholesalers who have different financial requirements than retailers and that are at least one step removed from direct interaction with the end-user. The question of applicability also applies with regard to agricultural water districts. How would such a hypothetical rate structure be applied? Volumetrically or based on utilization of WUE technologies or...? This recommendation needs much more work. The footnoted description from Utah though helpful contains many vague terms and concepts.

P 65 L 13-16: What does WR R3 mean? From what baseline is “new or increased demand for diversions” measured? If the new point of delivery is receiving water under current contract entitlements and consistent with regulatory requirements, would that be “inconsistent” under this proposed recommendation? More clarity, specificity and examples are needed here to understand the Council’s intentions.

P 65 L 19-20 and 29-30 and 35 and 37 and 42 and note 16: See previous comment about use of words such as “water flow criteria”, “flow objectives and criteria”, and “flow standards”, etc., as inappropriate and incorrect with regard to the SWRCB’s processes related to updating and implementing a Water Quality Control Plan.

P 65 L 41: [revise](#) “...flows ~~needed to protect the Delta and its ecological resources~~ [necessary to protect public trust resources](#) and does not include other public trust considerations.” This is the statutory language, which should be the default generally rather than rewriting the language in the Act.

P 65 L 42: [revise](#) “While ~~informing only the starting point for~~ the broader flow-standard-setting process...” The language mischaracterizes the document. It is not a starting point; it is one assessment among a very large volume of existing reference materials. Moreover, it is caveated in both the legislation and the SWRCB’s report as having no regulatory effect. As the Council acknowledges elsewhere, the report does not reflect any of the necessary balancing required of SWRCB actions, nor is it consistent with the coequal goals.

P 66 L 9 and 13: Proper SWRCB wording as opposed to “flow objectives”. What is contemplated are a potentially updated WQCP for the Delta and “studies” for the tributaries.

P 66 L 9-14: [Replace](#) this entire “Problem Statement” with the following – [“Until the SWRCB completes its review and potential update of the Water Quality Control Plan for the Bay-Delta, and carries out studies of high-priority tributaries called for by the Delta Reform Act, a high level of uncertainty will continue to stymie efforts to improve the reliability of the State’s Delta watershed dependent water supplies.”](#) The current language misstates the activities of the SWRCB and implies a legal Armageddon based upon a misunderstanding of water rights and water rights law. In fact, as recent history has shown, everything is already subject to potential litigation. Whether it matters or not, or is valid or not, are different questions and questions of no real concern to the Delta Plan.

P 66 L 16: This is very un-reader-friendly. There is no reason not to simply put the text of ER P1 here too, even though it technically is “from” Chapter 5.

P 66 L 18: [delete](#) “network of”.

P 66 L 26: [add](#) “...Delta’s [native](#) fisheries...”

P 66 L 32-35: Here the council asserts it has the authority to “approve proposed conveyance improvements.” That is patently untrue. The Council must include the BDCP in the Delta Plan if DFG makes the determinations required in Section 85320(e). The Council does have the authority on appeal to review DFG’s decision, but it may not substitute its judgment in place of DFG’s; so long as DFG’s decision is supported by a preponderance of evidence the Council must uphold that decision and include the BDCP in the Plan. Even if the Council can legitimately determine that DFG’s decision is not supported by the evidence, its authority is limited to not including the BDCP in the Plan. While a Council decision that BDCP will not be included in the Plan will have significant implications for the BDCP, that is the limit of the Council’s authority and it specifically has no regulatory authority to “approve” conveyance improvements.

P 66 L 39-40: **add** "...greater water supply reliability, recover export capability through...." BDCP is not just about reliability, it is also intended to recover, pursuant to an NCCP/HCP, export capability lost to previous and current regulatory constraints.

P 67 L 6-7: **revise** "...export at times of surplus when ~~this~~ water ~~can~~ could otherwise be diverted."

P 67 L 8: **add** "...through local water supplies and previously delivered export supplies, and storage...." As written, the text implies local supplies met all demands, which is obviously not the case.

P 67 L 9: **revise** "...delivery of ~~the~~ available surplus water."

P 67 L 14: **revise** "...water storage ~~from~~ now provided by the Sierra snowpack."

P 67 L 33: **add** "...additional surface storage has been...."

P 68 L 7: **revise** "...so that more ~~stormwater water~~ runoff could be captured...."

P 69 L 9: **revise** "...that can be accomplished most quickly within ~~the next 5 to 10 years.~~" 5-10 years is pretty optimistic for most storage projects, even local ones.

P 70 L 2: **add** "...provides for roughly...."

P 70 L 20: **revise** "...problems have ~~forced~~ resulted in the adjudication of some groundwater basins...."

P 70 L 32: **delete** "voluntary"

P 71 L 3: **add** "...number of adopted plans...."

P 72 L 18: **revise** "...caused by droughts ~~or~~ and will be critical in the event of a catastrophic failure...."

P 73 L 10-12: **Delete** second clause of first sentence because it is wrong and inconsistent with rest of section, including lines 32-34. **Revise** to read "...improving water supply reliability, ~~California has limited information on which to base sound water management decisions.~~ ~~The~~ the State's information infrastructure...." This still makes the valid point.

P 73 L 15-17: **Delete** sentence starting with "For example". This is a red herring and "information" that is not worth pursuing generally. In addition, water can't be "over-allocated" because the water rights system prevents that from occurring among legal diverters of water. The better statement might be something along the lines of real-time diversion data would be beneficial to get a better handle on what's actually happening at any given time pursuant to all those permits the Board issued.

P 73 L 19-23: **Delete** this sentence as it only adds to the document if one misinterprets the results of the satellite study. The study did not show "overdraft", it showed changes in gravity which was translated to the removal of water from groundwater basins, which is here equated with "overdraft." The chain of argument does not hold. This "study" was based on only 3 data points in the Central Valley. USGS data regarding subsidence is much more probative. If anything, this satellite data illustrates the critical importance of groundwater to sustain water supplies in the Central Valley. If it must stay, at least make it a separate paragraph so it doesn't contaminate the prior discussion regarding data gaps.

P 73 L 30: **revise** “...investigate and **enforce terminate** illegal diversions....”

P 74 L 38-41: **delete** WR R10. This has the same problems as “policy A” on page 62.

P 75 L 17.5: **add** “Consistent with legislative direction to incorporate the Bay Delta Conservation Plan (BDCP) into the Delta Plan pursuant to section 85320 of the Act, the Council has determined that the baseline for measuring progress toward reducing reliance on the Delta to meet California’s future water supply needs relative to SWP and CVP export levels will be established by their operations and long-term average deliveries in compliance with state and federal regulatory standards and requirements applicable upon initiation of operation of new Delta conveyance facilities included as part of the BDCP.”

P 75 L 18: **add** “Improved water supply reliability baselines should be....”

P 75 L 28: **revise** “Water **Supply Reliability** Elements” This language is consistent with the language on page 63.

P 75 L 35: This repeats the misstatement of SWRCB activity. The Board will not be able to “implement” an updated WQCP at the same time it “adopts” the potentially revised plan. The term “flow objectives” is incorrect. Moreover, the Act does not require “adoption” of “flow objectives” for the major tributary streams, it directs that “studies” be completed by then.

P 76 L 16-17: **delete** this bullet. The “policy” it is “measuring” is flawed, as commented upon above.

P 76 L 19: **add** “...reduction in statewide urban....”

P 76 L 24-25: As on page 63, L 25, the language regarding reporting of “actual or projected reduced reliance” is opaque and needs additional clarification.

P 83 L 23: **delete** “naturally”

P 83 L 25-26: **add** “...adapt to them in a manner that does not impair the achievement of the coequal goals.” As written it seems like reduction of stressor impacts is not a focus and adaptation could occur but to the detriment of native species – as is much the case today.

P 84 L 10: **revise** “~~the natural~~ a more variable flow regime” per comments above.

P 84 L 34: **revise** “...crop production, and altering their hydrology by diverting water above and within the Delta for use within and outside the watershed ~~to the southern parts of the state.~~” It is inappropriate to only cite southern California as the beneficiary of diversions in or from the watershed.

P 86 L 42: **revise** “a more ~~natural~~ variable flow regime” per previous comments about inappropriateness of this terminology.

P 87 L 2: **revise** “Creating a More ~~Natural~~ Variable Flow Regime” ditto.

P 87 L 3-4: **revise** “...reflecting historical flow patterns and variability ~~conditions~~ are best for....”

P 87 L 16: **revise** “...for setting ~~flow criteria~~ determining desirable flows at critical times for improving ecosystem function.”

P 87 L 17: **revise** “More flow variability during specific periods is ~~natural flows are~~ important to migratory cues of many fish species.”

P 87 L 20: **revise** “...a more variable ~~natural~~ flow regime in the Delta...”

P 88 L 8-18: **revise** this language to get what the Board is actually doing and its appropriate terminology, which is not “flow criteria and objectives”.

P 88 L 16-22: **delete** both of these examples as they represent significant overreach of the Council’s actual authority, as well as being facially inconsistent with the Act’s reservation of all regulatory authority related to water rights to the SWRCB.

P 89 L 3: **delete** “...Plan ~~objectives and establish flows~~ as follows:”

P 89 L 4-7: **revise** this language to reflect the proper terminology. The Board cannot “implement” a revised WQCP by the date included here. With regard to tributaries, the Act only directs that “studies” be completed, not that standards be adopted. The bullets should be identified as “(a)” and “(b)” to be consistent with reference to them on Page 88, L 12.

P 93 L 9: **revise** “...how more ~~natural~~ variable flows...”

P 93 L 22-25: ER R4 is the same as ER P4?

P 95 L 38: **revise** “BDCP is expected to contribute significantly to furthering the achievement of ~~affect~~ the Delta Reform Act’s coequal goals.”

P 97 L 4: **delete** “...Act ~~and~~ no later...”

P 98 L 13: The Board cannot “implement” on this timeline. Also, “flow objectives” is wrong terminology. The WQCP includes “water quality objectives”.

P 98 L 33: **revise** “...more variable ~~natural net~~ flow patterns to support...”

P 106 L 1-4: **revise** “...establish water quality objectives that will be partially ~~for which implementation is best~~ achieved through assigning responsibilities to water-right holders and water users. This is because the water quality parameters ~~to be controlled~~ are significantly affected by flows and diversions; ~~these~~ current responsibilities were established in Water Rights Decision 1641.”

P 106 L 6: **add** to end of paragraph “However, consistent with judicial interpretations of Article X, Section 2 of the California Constitution, dilution cannot be the solution to pollution.”

P 107 L 9-10: **revise** “...encourages the ~~completion~~ timely implementation of the elements of the California Water Board’s 2010...” These reports are completed already. Also, aren’t these reports of the SWRCB and not of the RWQCBs – so why are they included in line 12?

P 108 L 21: add "...in the watershed and [the tidal cycle](#)."

P 108 L 29: revise "...and [presently](#) serves as a water quality standard [regulating](#) ~~to regulate~~ Delta outflow [at certain times](#)." The X2 standard is under review at this time and may not be carried forward, and it does not regulate outflow year-round.

P 108 L 33-34: ~~delete~~ this final sentence. This conclusion is controversial in that there has not been a determination that there is a "population level" correlation to the position of X2. Furthermore, during the SWRCB hearings during the development of its public trust resources flow criteria, the Board's science panel indicated there was a question as to whether the location of X2 in relation to the distance to the Golden Gate was significant or whether what really mattered was where was the preferable habitat for smelt (geomorphological, turbidity, vegetation, food supply, etc.) and its correlation with X2 rather than simply moving it west.

P 109 L 4-6: revise "...freshwater environment year-round [primarily](#) for [in-Delta](#) water supply [and export for beneficial uses](#) ~~purposes~~ under current water project operations. It has been hypothesized that allowing [more](#) seasonal and interannual [salinity](#) variability ~~more in keeping with natural flows~~ will benefit native species."

P 109 L 8-9: revise "...and introduced aquatic plants, ~~and introduced~~ fish [and other species](#) such as Asian clam, largemouth bass...."

P 109 L 10: revise "...also hypothesized to be [important](#) ~~a controlling factor~~ for populations...."

P 109 L 17: revise "...particularly ~~in~~ [from](#) the San...."

P 109 L 21: add "...higher salt concentration than the [original](#) supply water."

P 110 L 22: add "...and municipal uses [without new conveyance infrastructure investments](#)."

P 110 L 29: revise "[Water conveyed through the](#) ~~The~~ Delta is used...Californians. ~~#~~ [The](#) Delta is also...."

P 112 L 19: add "...all recipient regions [within the Central Valley](#) that are...." As written agencies outside the Delta watershed would be required to participate in CV-SALTS. Was that the intent?

P 113 L 15-18: ~~delete~~ the sentence beginning "This conclusion" as it is over the top and there are similarly strong "challenges" to material regarding "X2" for example. Add "[However](#)" at beginning of sentence beginning "Food web effects".

P 120 L 18: The Board will not "implement" on this timeline and "flow objectives" is the wrong terminology.

P 120 L 30: [insert](#) space between "5" and "years".

P 120 L 33: ~~delete~~ "interannual".

P 133 L 7: [replace](#) "a historically" with "an historically".

P 136 L 23: add "...provided they mitigate any, or do not, decrease...."

P 140 L 32-33: The Act directs that the Council "shall recommend in the Delta Plan priorities for state investments" in levees. This is a deficiency that needs work by the Council, "in consultation with" the CVFPB, rather than deferring the subject. The general framework is a start, but it does not represent a "strategic levee investment plan" which is supposed to be part of the Delta Plan.

P 140 L 34: The \$250M figure seems too small considering the present draft of the DPC's ESP shows a table referencing \$238M in levee spending since 1989. Certainly more than \$12M was spent between the "early 1970s" and 1989.

P 143 L 38: replace "system" with "capability".

P 145 L 2: replace "the" with "that".

P 146 L 10: delete "...relating to levees conditions...."

P 146 L 12: revise "...on a local basis to better serve ~~for~~ Delta and state interests."

P 146 L 36: add "...for the regional and state benefit of all beneficiaries...."

P 147 L 2: add "...levees to help protect water quality."

P 147 L 35: replace "support" with "counteract".

P 147 L 37.5: There should be a "Policies" heading and "no policies" language added for consistency.

P 150 L 10: add "after review for consistency with the coequal goals and Delta Plan by the Council" to the end of the sentence.

P 150 L 12: add "after review for consistency with the coequal goals and Delta Plan by the Council" to the end of the sentence.

P 155 L 21: insert a space between "above" and "ground".

P 157 L 37: replace "removes" with "remove".

P 163 L 2: Why include a performance measure that is to occur 6 months prior to adoption of the Delta Plan? This should be ~~deleted~~.

P 163 L 3: Although legislation has been introduced, is the January 1, 2012 date realistic?

P 163 L 13-14: add "...will be maintained at sustainable levels in the future." It is inappropriate to have a performance measure that contemplates no impact to agricultural receipts.

P 163 L 21-22: ~~delete~~ this bullet as it is repetitive to the first and also includes a commitment to maintaining a status quo condition rather than working to make the Delta's evolution a net positive.

P 163 L 24-25: Does this measure envision habitat creation as a “conversion” from “open space”? If not, this bullet should be rewritten to clearly say so. If so, the second sentence of the bullet should be **deleted**.

P 169 L 15-16: The editorial assumption regarding the “likelihood of getting voter approval” should be **deleted**.

P 170 L 5: **add** “...into the Delta Plan [pursuant to the requirements of the Act](#).”

P 170 L 12: **replace** “by **this date**” with “by [January 1, 2014](#)”.

P 170 L 18: **replace** “**flood risks**” with “[levee failure](#)”.

P 170 L 19: the funding is not needed so much for mitigation commitments, which are paid for by the project contractors, but for ecosystem investments and habitat creation that are not related to specific mitigation requirements but which are targeted at restoration as a state interest benefit?

P 170 L 26: What is the basis of the \$27 million per year figure? That should be explained, at least in a footnote.

P 170 L 32-35: What is the basis of the \$50 million per year figure? In addition to the Science Program and ISB (\$27M) and the Conservancy (\$10M – which is assumed to include land purchase costs), what is the basis of the \$13M in administrative costs for the Council and the Commission? These figures seem high and should be explained, at least in the footnote.

P 170 L 44-45: **add** “...funding once the [BDCP](#) funding plan is completed.”

P 172 L 30: What is the basis of the \$10M for development of a plan? Seems quite high.

P 173 L 12-26: **delete** this entire “User Fees” section. Any user fee development will require significant stakeholder involvement, hashing out of numerous details, etc. Simply dropping such a proposal into the Delta Plan is a disservice and a distraction that is not necessary at this time.

P 174 L 2-9: **delete** this entire “Public Goods Charge” section. Energy and water do not equate in this context. This also seems to be on top of the fee authority the Council seeks to generate an additional \$50M/year, which is already overkill. As with the “user fees” proposal, the proposal of a “public goods charge” is a disservice and distraction to the pursuit of the Delta Plan.

P 174 L 11: The prioritization of state investments in levees is something that the Council is charged to include in the Delta Plan itself after “consulting” with the Central Valley Flood Protection Board (see Delta Reform Act § 85306). At the very least the “due date” is far too remote and should be moved to January 2013 if the Council is not going to fulfill its obligation under the Act.

Appendix A –

General: Appendix A presents an exceedingly convoluted rationale to support an apparent assertion that the Council has the authority:

- “to approve proposed conveyance improvements”
- “to dictate” the terms of the BDCP
- “to regulate conveyance improvements”; and
- “to include regulatory Policies regarding conveyance”

Each of these assertions is patently untrue. There is nothing in the statute that could be read to allow the Council to “dictate,” “approve,” or “regulate” conveyance or any portion of the BDCP. The Council must include the BDCP in the Delta Plan if DFG makes the determinations required in Section 85320(e). The Council does have the authority on appeal to review DFG’s decision, but it may not substitute its judgment in place of DFG’s; so long as DFG’s decision is supported by a preponderance of the evidence the Council must uphold that decision and include the BDCP in the Plan. Even if the Council can legitimately determine that DFG’s decision is not supported by the evidence, its authority is limited to not including the BDCP in the Plan. While a Council decision that BDCP will not be included in the Plan will have significant implications for the BDCP, that is the limit of the Council’s authority. More specifically, the Council’s apparent assertion of authority to dictate or regulate the outcome of the BDCP has no basis in law.

The “Regulatory Authority over Conveyance” section of the Appendix must be deleted in its entirety, or completely rewritten to correctly describe the authority the Council does have with respect to the BDCP and actions included within it. That is, the authority to entertain an appeal of DFG’s decisions under Section 85320(e) in a manner that does not affect DFG’s existing authority (Sections 85032(a) & 85322) or substitute the Council’s judgment for that of DFG. If, within those statutory constraints, the Council legitimately can support a finding that DFG has not met the requirements of Section 85320(e) it shall decline to incorporate the BDCP into the Plan. Its role and authority with respect to the BDCP ends there.

P 3 L 21: replace “dictate” with “[recommend](#)”.

P 3 Note 4: delete “...if ~~and-when~~ it was”

P 4 L 14-18: formatting of font seems off by a size or two too big.

P 4 L 31: ~~delete~~ the last sentence as it doesn’t add anything and is actually confusing since there’s no identified “policy” that is “following”.

Appendix B –

P 7 Paragraph 23: We reiterate our objection to the standard of review included in this paragraph.