



**State & Federal Contractors
Water Agency**

1121 L Street, Suite 806, Sacramento, CA 95814

September 26, 2012

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

Dear Chairman Isenberg and Council Members:

The State and Federal Contractors Water Agency is pleased to provide the attached specific comments regarding the final draft strike-out/underline addition Delta Plan discussed by the Council at its September 13th, 2012 meeting. Please note that the page and line citations are referenced to the redline versions of the documents.

While we realize the Council did not provide additional direction regarding various criticisms of more policy related issues we have raised in these and prior comments, we are hopeful that our other comments, which make up the bulk of our submittal, can be incorporated into the final draft as they are editorial suggestions to improve clarity and tone and correct factual errors that do not alter the substantive content of the draft.

We look forward to the publication of the supplemental volume of the Draft PEIR and subsequently the response to comments received on both the original PEIR and the supplemental volume. We also look forward to the review and further discussion this fall regarding your previously adopted administrative procedures, including those which we continue to object to related to a potential appeal of the Department of Fish and Game's certification of the Bay Delta Conservation Plan's satisfaction of the criteria set forth in the Delta Reform Act for its incorporation into the Delta Plan.

We request that when the final draft Delta Plan is released that you provide an index of language deletions and additions as compared to the September 5th draft to help expedite review.

We appreciate all the effort you and your staff have put into this process and the responsiveness to our constructive engagement and that of other stakeholders. We will continue our participation to help develop a successful Delta Plan that furthers the coequal goals.

Sincerely,

A handwritten signature in black ink, appearing to read "Byron M. Buck", is written over a light blue horizontal line.

Byron M. Buck
Executive Director

Enclosure (1)

P xxvi, last bullet WQ R8: delete duplicate language, “and determine control measures for implementation starting in 2020.”

P 3, L 18: New language though somewhat improved still gives impression of population equally spread over region when that is far from the case. Suggest the following as a substitute for the last sentence: “The Delta is comprised of both a Primary Zone formed by the unique patchwork of mostly agricultural islands and an increasingly urban landscape of the Secondary Zone that includes the cities of West Sacramento, Stockton, Tracy and other communities. Of the Delta’s half million residents, about 98% live in the Secondary Zone.”

P 4, L 23-24: This sentence referencing the state policy to reduce reliance on the Delta should accurately reflect the statute and thus “in meeting future water supply needs” should be added after “Delta”.

P 5, L 30: Use of “from past abuses” is inappropriate and inaccurate as most of the actions were taken consistent with law etc. We suggest “from past actions” as a substitute.

P 9, L 22: Use of “threaten” is inappropriate as it can be read to imply incompatibility. We suggest “impact” as a substitute.

P 13, L 39: To improve accuracy, we suggest an addition; “run backward, and some fish, lacking...”

P 15, Sidebar, 3rd bullet: Suggest adding language that 98% of residents live in the Secondary Zone.

P 16, L 17-18: This sentence regarding the salmon fishery is out of place and, if included at all, should not be part of a “Water Exports Cut” paragraph. Moreover, it is important to reference the fact that the PFMC determined that ocean conditions were most determinative of salmon population levels and not other factors that are often cited.

P 19, L 11-14: This sentence falsely equates the State’s new “reduce reliance” policy with an absolute reduction in exports from the Delta and a “give back” to the system. In fact, new paradigm is to better integrate activities, construct new infrastructure to enhance operational flexibility, and to seek to shift exports from drier times to wetter ones. Consequently, the first sentence of this paragraph and the word “Thus” from the second should be deleted.

P 39, Table 2-1: Description of Delta Watermaster > suggest adding “under authority delegated by the SWRCB” at end of sentence. Description of Bureau of Reclamation > suggest addition “which, among other activities, pumps water through...” to reflect the fact the CVP includes units other than the San Luis Unit.

P 40, L 9: The word “transparent” should not have been deleted as that is included in the statutory direction to the Council. It needs to remain.

P 43, L 19: The word “transparent” should not have been deleted as that is included in the statutory direction to the Council. It needs to remain.

P 54, L 23-26: The use of “baseline” and the “cumulative impact” approach to assessing whether a “proposed action” will have a “significant impact” only adds confusion and uncertainty. The cumulative

effect concept essentially moots the Legislature's intention and definition of a "covered action" as itself having to have a significant impact as it is hard to imagine any action in the Delta, combined with the "probable future" actions of the BDCP, not having a significant "cumulative" effect. That can not have been the intent of the statute.

P 56, L 16-17: Leaving in the expiration date is problematic as it removes certainty from the transfer market leading up to that date. Instead, we suggest substituting language stating that "This exemption will be reviewed by the Council for possible amendment by ~~on~~ January 1, 2015. ~~unless the Council acts to extend the exemption prior to that date.~~ The Council contemplates that any amendments ~~extension~~ would be...."

P 56, L 38-39: Staff and Council previously indicated this language would be updated pending the outcome of Lois Wolk's bill (1495). The Wolk bill includes a much more narrow definition of what is considered a "routine" activity for the purposes of exemption from covered action applicability. The Governor has signed 1495 and thus we suggest deleting the current language and replacing it with specific reference to the bill language in the administrative exemption. The bill reads: "(i) Dredging to maintain the Stockton Deep Water Ship Channel at a depth of 40 feet in the sediment trap at the confluence of the San Joaquin River, between river mile 39.3 to river mile 40.2, and to maintain the remaining Stockton Deep Water Ship Channel at a depth of 35 feet plus two feet overdredge from river mile 35 to river mile 43."

P 57, L 36-41: We reiterate our position that if the BDCP is incorporated into the Delta Plan then by definition all of the activities undertaken pursuant to it will be consistent with the Delta Plan and thus there is no need for a certification process. A consistency determination requirement by the Council, no matter how pro forma, is redundant, unnecessary, and provides an avenue for delay in furthering the achievement of the coequal goals.

P 60, L 11: In addition to "organizes and integrates" the Council's science plan should be one that prioritizes ongoing research and monitoring as well.

P 72, Sidebar, last bullet: Delete "when the limited amount of available water must remain in the Delta". This language implies that NO water may be diverted and deleting it does not change the point of the sentence.

P 73, L 10: Insert the following to be more accurate, "...one corner of the state can have ripple effects" since not all actions have these sorts of connections.

P 73, L 19: Term "geographic situation" is confusing. This sentence is awkward and should be revised.

P 73, L 23: Insert the following to be more accurate, "...fear the impacts of reduced water supply reliability...."

P 73, L 32: Insert the following to be accurate, "...meet the projected additional water demands...."

P 74, L 12: Problem with this sentence is that "exports" don't "support" flow patterns nor do they reduce vulnerability to disruption. New conveyance facilities will provide the capability to achieve these identified outcomes. The sentence should be revised accordingly.

P 81, L 27-30: Suggest addition for clarity, “Maintaining freshwater conditions to meet regulatory requirements in the Delta...” Also, it is unclear how it follows that it will “increase risk from catastrophic levee failure and floods.” This last part should be explained or deleted.

P 82, L 8-9: The Public Trust is NOT a “longstanding constitutional” doctrine. It is a common law doctrine. Suggest deleting “constitutional” as easiest way to handle.

P 82, L 23-27: It is not enough to quote the full text of Article X, Section II in the Glossary. The portion of the Constitution directing that the State’s waters be put to beneficial use to the “fullest extent” should be included here as well, as it is that fullest use that is subject to the reasonable use requirement.

P 83, L 2-5: This discussion of the Public Trust doctrine leaves the reader with a false impression that serving “public trust” resources trumps all other considerations. Even if “feasible” the touchstone of the Public Trust is serving the *public interest*, which may require not dedicating resources to the public trust values. To provide the full picture, the following quotation from the decision would be beneficial, “as a matter of practical necessity the state may have to approve appropriations despite foreseeable harm to public trust uses.”

P 95, L 40-41: It is important to note that DWR’s reliability assessment is based upon the capability of existing infrastructure so as not to give the impression this is necessarily a continuing trend.

P 97, L 24: Water transfers are an important tool for improving water supply reliability, as the original language stated. The concept of “predictability of exports” is not related to transfers and, in fact, the following sentences point out the uncertainty related to the capability to move transfer water. We suggest keeping the original language with the addition of “improving”, i.e. “...important tool for improving water supply reliability.”

P 97, L 40: The term “past expectation” should be deleted as it never existed and doesn’t exist today. If anyone is aware of the variability of water supplies and the impact of hydrology it is the exporters. This and the following clause in the sentence are without basis. The entire first paragraph (L 39-42) of the section should be deleted.

P 110, L 14-15: Famigletti did not measure lost groundwater storage capability as this statement implies, he measured how much groundwater was extracted and not replaced, i.e. the space created by that use. Not all of that resulted in subsidence and the loss of groundwater storage capacity.

P 110, L 16: Replace “many” with “some”. As written, implies unmanaged overdraft is widespread and it is not.

P 115, L 31: Why was footnote 19 deleted and relegated to a mention in the appendix? This is an important definition to include in the text as it originally appeared to help alleviate potential uncertainty. In addition, it is critical that the definition of “water supplier” be forwarded to OAL as part of the policy and severing it from it raises concerns about that being done.

P 118, L 32-37: We reiterate our 6th draft comment regarding this language as overstating the “problem” and ignoring the vast majority of California’s groundwater that is actively and well managed. There are some areas that are not utilizing best practices and information related to groundwater management should be more transparent. However, the sky is not falling as this “problem statement” suggests.

P 124, L 39-42: This sentence should be rewritten. Again, the Council appears to inappropriately equate the reduce reliance policy with reducing exports in absolute terms. This is a position without support. To make the point that seems to underlie this language we suggest the following, “...that will ~~benefit the amount of water,~~ improve the quality of water and the timing of flows in and through...”

P 139, L 7-8: This sentence implies that the projects are the only cause of harm to the ecosystem. The proscriptions on project operations may have “fully” mitigated the harm caused but other stressors in the system may have blocked those benefits from being realized since they cause harmful impacts too. We suggest a period after “reduce damage” and deletion of the rest of the sentence.

P 139, L 18-19: There are a number of “other stressors” that should be referenced along with invasives, e.g. pollution, unscreened diversions, etc.

P 145, L 40: We do not think the use of the term “master variable” is constructive or informative, but it does perpetuate misunderstanding. We suggest substituting “important” for “master”.

P 150, Figure 4-4: The graphic describing “unimpaired” flows should state that while the water facilities are removed, flood control facilities and the channelization of the rivers and Delta still exist. Historically, “unimpaired” flows would have flooded the Sacramento Valley and created what was known as a great inland sea, which would reduce the volume of outflow and attenuate that flow dramatically as compared to current conditions.

P 150, L 12-13: There seems to be some verbiage missing here.

P 152, Sidebar, last line of 2nd to last paragraph: This statement is inaccurate. The appeal the Council may hear is regarding the DFG certification of the BDCP meeting the statutory criteria for its inclusion in the Delta Plan, not whether the BDCP will be included or not. This is stated correctly in the sidebar on page 103.

P 153, L 2-3: There seems to be some verbiage missing here.

P 153, L 37: This statement begs the question of what “significant numbers” are. Even if this were true, which we are skeptical of since the issue is not just entrainment through the pumps but also providing a feeding haven for predators such that entrainment is relatively low because the fish have been “entrained” into predators’ stomachs. Moreover, under the ESA, ANY take is “significant”. This sentence should be revised or deleted.

P 158, L 22-23: Why was the sentence regarding other stressors deleted? We request it be returned to the text.

P 161, L 14-21: There is no discussion of the current exemption to this policy that exists for California, which I think is in place? Also, the issue is not just forcing removal of vegetation, but also a prohibition

on new planting which is critical to ecosystem restoration along channels, especially where setback levees are not feasible.

P 164, L 30: Need to keep the word "century" in the sentence and not delete it.

P 166, L 25-44: Any discussion of the critical role of ocean conditions in the health of salmon populations is conspicuously absent considering the conclusions of the PFMC as to being a key factor.

P 167, L 12: If there are "unmitigable stressors" it seems worth mentioning the possibility of having to adapt expectations of restoration or of the tools used to try to achieve it as well.

P 167, L 24: It is inappropriate to state that flows are insufficient to "protect" the Delta based on the SWRCB's 2010 flow report as that report was non-regulatory in nature and, as the SWRCB itself caveated heavily, did not take into account any balancing of other beneficial uses as required by law when establishing water quality objectives. This sentence should be deleted and doing so will not change the paragraph's purpose or message.

P 176, L 28: The proper term is "mark select", not "marking selective".

P 201, L 11-23: It is important to note that the DPC's LURMP and ESP must be consistent with the Delta Plan and that it is the Council that makes those determinations.

P 210, L 37: There are some islands in the central Delta that have subsided as much as 30 feet. This should be noted.

P 227, L 6: At the end of the sentence add the following, "...guided by the DPC's ESP, consistent with the Delta Plan."

P 245, L 27-36: The entire discussion of X2 should be deleted as it does "continue to be studied and debated". Instead, keep the first 2 sentences of the paragraph and the last. Most of the verbiage in-between repeats hypotheses that have been rejected by the courts and are in dispute; it should be deleted.

P 245, L 43-45: This sentence should be deleted as it is referring to a hypothetical future scenario and it is out of place with the rest of the paragraph: [~~The combined effects of sea level rise and changes in other aspects of estuarine habitat caused by climate change and increased water diversions are likely to pose a significant threat to the future survival of Delta smelt (Feyrer et al. 2011).~~]

P 250, L 6-12: The last sentence in the "Ammonium" bullet should be deleted and replaced with a sentence reflecting current scientific information. [~~It is not known, however, how much this inhibition extends to freshwater algae in the Delta.~~] "Ammonium impacts on phytoplankton have also been observed in the Sacramento River below the Sacramento Regional WWTP. Parker et al. (2012a; 2012b) observed not just an inhibition of nitrate uptake, but also an inhibition of nitrogen uptake and a decline in primary productivity when ammonium concentrations are greater than about 4 µmol/L."

P 259, L 14-20: The target date of January 2018 to adopt and implement nutrient objectives for the Delta and Suisun Marsh is unnecessarily and inappropriately distant. The San Francisco Bay Regional

Water Quality Control Board and the SWRCB both have policy development programs underway to develop nutrient objectives, and the analysis of nutrient impacts in the Delta and Suisun Bay is an active area of current research. The Water Boards should be able to adopt nutrient objectives for the Delta and Suisun Marsh well before 2018. The Council should seek to prioritize an earlier and more reasonable date for development of nutrient objectives that reflects all the progress to date.

P 276, L 5: after “development,” add “ecosystem restoration,”.

P 277, Sidebar, last paragraph: It would be informative, and remove a false impression of how much levee restoration costs today, to include an estimate of what the cost to make the identified repairs would be today.

P 278, L 13-14. This is an incomplete statement. Levee failures can, in some places, cause damage to the ecosystem. But in other areas, levee failures can and have created new habitat (e.g., Liberty, Little Holland, Mildred Islands).

P 282, L 9: “12 to 15 feet” should be replaced with “5 to 29 feet” or “up to 29 feet”. (per Joel Dudas, DWR Lidar specialist and “Contemporaneous Subsidence and Levee Overtopping Potential, Sacramento-San Joaquin Delta, California”, San Francisco Estuary and Watershed Science, 10(1), Brooks et al).

P 282, L 16-18. Undo deletion.

P 289, L 41-42. This statement is untrue. USGS has found ecosystem benefits (phytoplankton growth) on the flooded Mildred Island.

P 312, L 5-15: Add new bullets: “Establish Acreage goals for new ecosystem enhancements, including set-back levees and breached levees.” And, “Agencies avoid spending public money on levees that will eventually be breached for ecosystem enhancement.”

P 322, Glossary, “coequal goals”: Why was “shall” replaced with “must” when “shall” is what is in the statutory definition? The statutory language should be used.

P 340, Glossary, “low salinity zone”: Everything after the first sentence should be deleted as superfluous and irrelevant to the definition of the LSZ. “X2” is defined later so it should not be mentioned here. Moreover, including the “hypothesized” conclusion has no place in a Glossary.

P 342, Glossary, “Public Trust Doctrine”: This definition completely ignores the central tenet of the doctrine that it is the *public interest* that is key and that there may be times when it is either infeasible or a reasonable policy choice is made to take the most “protective” action. This presents only one side of the coin.

P 345, Glossary, “unimpaired flow”: This does not state that the measurements are made with the current flood management facilities in place and the current geometry of the system which is not what that “natural” system would be. “Unimpaired flows” in a “natural” condition would be significantly different from those under the DWR contrived “unimpaired flow” model.

SFCWA comments regarding the final draft strike-out/underline addition of the Delta Plan
September 26, 2012

P C-1, Appendix C, WR P1: This new language doesn't make much sense and is unclear. The "covered actions" aren't going to be completing current UWMP/AWMPs?

P C-12, Appendix C, FR R1: This is a bit confusing. Shouldn't it include actions that "contribute to" or "further" the coequal goals, not just "do or may achieve"?

P N-1, Appendix N, Table N-1: We reiterate our objection to including a \$20M placeholder for Studies/Grants for 2013-2014 forward, in addition to the almost \$10M of "other studies", prior to undertaking an inventory and prioritization of the science already being undertaken and the development of a new, integrated Science Plan.

P P-3, Appendix P, L 10: there are two "that"s and one needs to be deleted.