

**SFCWA**  
**State & Federal Contractors  
Water Agency**

1121 L Street, Suite 1045, Sacramento, CA 95814

November 2, 2010

Delta Stewardship Council  
980 9<sup>th</sup> Street, Ste. 1500  
Sacramento, CA 95814

Re: State and Federal Contractors Water Agency comments  
2<sup>nd</sup> draft Notice of Preparation

Dear Chairman Isenberg and Council Members:

The State and Federal Contractors Water Agency appreciates the opportunity to provide the following comments regarding the 2<sup>nd</sup> draft of the Notice of Preparation.

These comments are based upon the strike/add version of the document presented to the Council at its October meeting.

Page 3: The background section is exclusively focused on water management as the driver for the creation of the Council. This is too narrow a perspective and does not accurately reflect the broader issues that also provided impetus to the creation of the Council, including land use activities, loss of habitat, overlapping jurisdictional problems, a desire to improve flood protection and emergency management, etc. We believe these, and other issues pertinent to the Council's activities, should be similarly reflected in the background discussion beginning on page 3.

Page 6, Lines 16-22: We reiterate our view that section 85021 of the Delta Reform Act (Act) is not a policy directive intended *to be satisfied by the Delta Plan*. Section 85021 is explicit in calling for a "statewide strategy" of "investing in improved regional supplies" and then stating that "[e]ach region...shall improve its regional self-reliance" by undertaking specified activities. Section 85303 requires that the Delta Plan "shall *promote* statewide water conservation and water use efficiency and sustainable use of water," leaving implementation to local entities. While it is appropriate for the Council's Plan to support this statewide policy by offering technical assistance and encouraging funding and incentives to increase regional water management, it is beyond the Council's mandate to insert itself into what must ultimately remain local water management agency decisions as they work to apply the policy articulated in section 85021 to the differing and often unique circumstances within their regions. This and future references to section 85021 should reflect these distinctions.

**Directors**

**James M. Beck**  
*Kern County Water  
Agency*

**Jeff Kightlinger**  
*Metropolitan Water  
District of Southern  
California*

**Bill Harrison**  
**Dan Nelson**  
**Jason Peltier**  
*San Luis & Delta-  
Mendota Water  
Authority*

**Beau Goldie**  
*Santa Clara Valley  
Water District*

**Steve Robbins**  
**Jill Duerig**  
*State Water Project  
Contractors  
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**Tom Birmingham**  
*Westlands Water  
District*

Page 7, lines 4-9: We believe this paragraph overstates the role of the Council and its Delta Plan, seemingly turning what is supposed to be a duty to plan, coordinate, promote and review the actions of others for consistency with the goals of the Act, into a regulatory program. For example, to assert that the purpose of the Delta Plan is to meet “all” of the objectives of the Act is simply unrealistic and does not reflect the limited authorities of the Council. Section 85300 requires development of a Delta Plan that “furthers the coequal goals.” Achieving the goals will require the effort of numerous entities, under a range of authorities, many of which are beyond the scope of the Delta Plan. This section should be rewritten to recognize that the Delta Plan will be consistent with the coequal goals and will contribute to the achievement of those policy objectives identified in the Act which are pertinent to the Delta Plan and its implementation. We also believe it is inaccurate to characterize the Delta Plan as “a *legally enforceable* set of policies, strategies, and actions.” It undeniably will have *legal effect*, since the Council has the authority to remand a covered action to the action agency for reconsideration after a consistency review, and action agencies and regulators must consider the Delta Plan in making their decisions. But that is different than stating that the Delta Plan itself is legally enforceable. In addition, the use of the new, undefined term “Delta-related” as the apparent trigger for Council review of agency actions adds confusion to the question of the Council’s review authority, which is limited to “covered actions.” That term is defined in the Act (§ 85057.5) and should be used here instead of the more ambiguous and undefined “Delta Related”.

Page 9, lines 23-25: This language should clarify that areas receiving water exported from the Delta watershed include those served by diverters such as SFPUC, EBMUD, NDWA, CCWD, etc., along with the SWP and CVP.

Page 9, lines 26-32: The references to both “state and local agency actions related to the Delta” and “covered actions” in this paragraph raise the question of what the relationship is, if any, between the two and we request more clarification of that point. Although this section is specifically related to the “Primary Planning Area” of the Delta, the reference to 85300’s mention of “related to the Delta” seems to imply the potential for reaching beyond the Delta despite lines 30-32 reciting the definition of “covered action” being limited to actions occurring “in whole or in part” within the Delta or Suisun Marsh. This confusion should be eliminated.

Page 11, line 9: It would be beneficial to define what is meant by “implementation measures” and what the Council will be “implementing” as part of carrying out its Delta Plan, since other agencies will be doing the actual implementation of measures to further the Delta Plan.

Page 12, line 17: It is important to indicate the 20 percent reduction in per capita water use is based on a statewide aggregation and not focused on every individual in every jurisdiction reducing their use by 20 percent. “It is the intent of the Legislature that the urban water use targets described in subdivision (a) *cumulatively result* in a 20-percent reduction . . .” (Act, §10608.20(a)(2)).

Page 12, line 20: There is an implication that the Council may develop “implementation measures” that could include urban water conservation requirements “that expand upon” objectives in the Act. We do not believe this is appropriate or would be a fruitful direction for the Council to pursue. Instead, the Council should incorporate existing programs and activities that reflect ongoing developments in this arena.

Page 13, lines 10-11: The reference to the BDCP under the Improved Water Conveyance and Storage section is appropriate. We do believe similar references to the BDCP should be included under the Restore Delta Ecosystem, Improve Water Quality, and the Reduce Risks sections as well because of the demonstrable benefits the BDCP will have in those areas.

Page 15, line 23 et. seq.: A major "state interest" in the Delta is to maintain the capability of the SWP and CVP to provide reliable water supplies to their millions of consumers and the major economies in their service areas. This interest should be reflected in this section more explicitly.

Thank you for your consideration. We look forward to reviewing the next draft of the NOP.

Sincerely,

A handwritten signature in black ink, appearing to read "Byron M. Buck". The signature is fluid and cursive, with a long horizontal stroke at the end.

Byron M. Buck  
Executive Director