



**State & Federal Contractors  
Water Agency**

1121 L Street, Suite 1045, Sacramento, CA 95814

November 23, 2010

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

Re: State and Federal Contractors Water Agency comments  
3<sup>rd</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 3<sup>rd</sup> draft of the Council's proposed Notice of Preparation.

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

We acknowledge the difficult task the Council confronts, both from the need to undertake a programmatic EIR on the yet to be developed Delta Plan and the limited timeline established by the Delta Reform Act of 2009 (Act) for completion of both. In addition, the repeated use of "statewide" in the Act as a focus of various policy choices and direction to address some of those choices in the Delta Plan begs the question of appropriate geographic scope and raises the specter of the Delta Plan potentially crumbling under its own weight, as CALFED did.

Page (P) 1, Lines (L) 14-15: While there is no question the Delta Plan is intended to further the coequal goals as established in the Act, the Plan will not "meet" or achieve them but will rather contribute to their achievement by providing guidance, and in some cases direction, for the actions of others, in addition to "promoting" many other activities the Legislature deemed necessary to further the coequal goals. The Act itself recognizes that other agencies of the State, as well as federal and local government actions will be central to actually achieving the coequal goals and other objectives of the Act. Consequently, we urge the following change to this sentence, with consistent changes made to the similar language on P: 7, L: 11-12, 19-20. "The fundamental purpose of the Delta Plan will be to ~~meet~~ identify, recommend and, where authorized, implement policies, actions and activities to comprehensively address all stressors on the system in furtherance of the achievement of the coequal goals, as defined in Water Code section 85054, ~~and all of~~ as well as the inherent subgoals and policy objectives within the purview of the Delta Plan defined by the statute, as identified in this Notice of Preparation (NOP)."

*Directors*

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**Tom Birmingham**  
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P 3, L 14: “Many of these issues...” The use of “these” is confusing because there is no reference point for “these”. If this sentence is to be kept it would seem appropriate to replace “these” with “the following” perhaps. We suggest, alternatively, deleting the sentence and beginning the next sentence with “Over the last forty years,”. It also would be informative to add a sentence or two about how most environmental laws affecting the “competition” for “freshwater resources” and which have become integral to California water management came into force long after the major water projects were constructed and contracts signed to deliver water supplies for agricultural and urban uses to meet then current and expected future needs. Consequently, the “environment” became an unforeseen but large “customer” of the water management system as a result of changes in public attitudes and expectations. These are two important drivers that led to the “escalation” of the “competition” that should be referenced. In addition, it would also be appropriate to mention climate change as an increasingly important driver, along with the need for adaptation to it.

P 4, L 21: We appreciate the Council at its November meeting accepting our suggestion that language be added here recognizing that the interruption of SWP/CVP deliveries, and not just the degradation of their quality, is a potential risk of levee failure.

P 4, L 26: strike “a” after “primarily” or, alternatively, change “wetlands” to “wetland”.

P 4, L 31: There seems to be a missing word or phrase here?

P 4, L 43: Again, the use of “these” is a bit opaque. We suggest the following substitution: [“Initiating an effort that would ultimately lead to the Legislature’s creation of the Delta Stewardship Council and its direction to develop the Delta Plan that is the subject of this NOP, the Governor...”](#).

P 7, L 23: We reiterate our view that section 85021 of the Act is not a “policy objective” of the Delta Plan. Consequently, the reference to section 85021 should be deleted from this sentence, as well as its full citation on P 8, L 7-13. 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,” (emphasis added) leaving implementation to local entities. While Council efforts to “*promote*” water conservation and water use efficiency in the Delta Plan will no doubt contribute to the achievement of the State’s policy to “reduce reliance on the Delta in meeting California’s *future water supply needs*” (emphasis added), the policy itself is not integral to nor appropriately referenced as an “objective” that helps “define” the Delta Plan. The Council should focus on the Legislature’s specific direction to it to “promote” water conservation and water use efficiency in its Delta Plan, and not seek to apply or achieve a general “policy of the State of California” that is not within the scope of the Delta Plan.

P 11, L10: We appreciate the Council at its November meeting accepting our suggestion that the list of “concurrent planning efforts” be expanded to include the Bay Delta Conservation Plan and the local Delta Counties’ HCPs.

P 11, L 26-29: We suggest the following changes for clarity and to remove redundancy. “The secondary planning area is defined by the watershed of the Delta (including ~~areas within the Delta watershed upstream of the Delta and~~ the Trinity River watershed that is “tributary” to the Delta [via the CVP’s Clear](#)

[Creek Tunnel](#)) and the geographical areas of California that include [the service areas](#) of water agencies that use water from the Delta watershed.”

P 12, Fig 1: We suggest adding a footnote or some other reference to the Trinity River watershed being included because it is not generally considered “tributary” to the Delta.

P 14, L 21: Per our previous comment, “meet” should be replaced with “contribute to the achievement of”.

P 16, L 18: Use of “determent” is awkward word choice. Suggest “negative effects” as a substitute.

P 17, L 6: We appreciate the Council at its November meeting accepting our suggestion that “will” be replaced with “could” and that this same change is to be made at P 19, L 35; P20, L 24; P 21, L 16; P 22, L 6; and, P 23, L 23.

P 17, L 14-25: We suggest reworking this section to reflect the Act’s direction to “promote” water conservation and water use efficiency. While helping to “facilitate compliance” with current requirements under SBX7 7, as noted at L 13, is appropriate, asserting the Delta Plan may include “requirements that would be more stringent” (L 14) and “mandated” (L 19 & L 21) is not. We suggest that if these concepts are retained that the words “requirements” and “mandated” on L 14, 19 and 21 respectively be changed to “recommendations” or “recommend”, as that would be consistent with the Legislature’s direction to “promote” and would not imply authority the Council does not possess. This comment is applicable throughout this section and its repeated inappropriate use of the word “requirements” or “requires” etc., including, but not limited to, the use of the word “requirements” on P. 18, L 16.

P 18, L 19-20: The concept of the Delta Plan inserting itself into local water agency decisions as to “the most economic local supplies be fully developed prior to reliance on Delta exports” is contrary to the state’s longstanding policy to promote integrated resources planning and should be deleted.<sup>1</sup> We suggest the following as a substitute that we hope addresses the concept attempting to be identified: [“Develop methodologies for determining, and facilitate implementation of, an effective portfolio approach to investing in and achieving regional water supply reliability that reduces reliance on Delta watershed diversions during periods of drought or regulatory proscription, and in meeting future demands.”](#)

P 18, L 31: We suggest adding a bullet that cites sections 85020(f) and 85302(d) of the Act as an additional basis of storage and conveyance improvements to be contemplated in the development of the Delta Plan.

P 18, L 34-35; P 19, L 1-5: We appreciate the Council at its November meeting accepting our suggestion that references to the 2008 Biological Opinions regulating the SWP and CVP need to be revised to reflect

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<sup>1</sup> This statement does not recognize how integrated water resources planning is performed throughout California. A sequential approach makes little sense when multiple resources must be brought to bear to achieve supply reliability and economics is only one factor in reliability planning. Further, a supply may be economic but not technically, environmentally or institutionally feasible. Economics are also not static. A supply not deemed economic today may be projected to be so within a specified planning horizon and prudent planning anticipates future supplies whose costs may only be “economic” in the future as well as be supportable under other feasibility measures.

their uncertain status and certain amendment in the near future either as a result of judicial direction and/or as needed within the Bay Delta Conservation Plan process. This is also applicable to P 20, L 15-20. We suggest the following simple statement as a substitute for both of these references: "[Actions consistent with requirements of applicable Biological Opinions pursuant to the Endangered Species Act.](#)"

P 19, L 19-21: We suggest adding the words "through conjunctive use programs" at the end of this sentence since that is what is being described.

P 19, L 25-27: We suggest deleting this bullet because it presumes "infrastructure repairs" that are impossible to predict and which may be necessary prior to "mid-century" or perhaps will not be required at all on such a definitive timeline. Moreover, the reference to SWP and CVP contract renewals is well beyond the scope of the Delta Plan.

P 23, L 19: Delete "a new governance structure" since the words are repeated.

P 24, L 1-3: We suggest a reference to Proposition 26 be added to inform the reader that the new limitations imposed by that initiative are recognized as a potential constraint on basing a financing plan "upon fees and charges".

P 24, L 11: We suggest adding a statement that recognizes the possibility of "findings of overriding consideration" for potential impacts that will not be able to be mitigated to a "less than significant" level.

P 31, List of responsible agencies: We appreciate the Council at its November meeting accepting our suggestion that the State Water Project Contractors Authority (SWPCA), the San Luis and Delta Mendota Water Authority (SLDMWA) and the State and Federal Contractors Water Agency (SFCWA) JPAs all be added to the list of responsible agencies as each of these JPAs will have a role in or be affected by the implementation of the Delta Plan.

Thank you for your consideration of our comments.

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