



Sacramento Regional Wastewater

Treatment Plant

8521 Laguna Station Road

Elk Grove, CA 95758-9550

Tele: [916] 875-9000

Fax: [916] 875-9068

Website: www.srcsd.com

April 6, 2012

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

**Board of Directors
Representing:**

County of Sacramento

County of Yolo

City of Citrus Heights

City of Elk Grove

City of Folsom

City of Rancho Cordova

City of Sacramento

City of West Sacramento

Stan Dean
District Engineer

Ruben Robles
Director of Operations

Prabhakar Somavarapu
Director of Policy & Planning

Karen Stoyanowski
Director of Internal Services

Joseph Maestretti
Chief Financial Officer

Claudia Goss
Public Affairs Manager

Subject: Comments on the Potential Policy Related to Water Quality as Presented at the March 30, 2012 Delta Stewardship Council Meeting

Dear Chairman Isenberg and Council Members:

At the Delta Stewardship Council's (Council) meeting on March 30, 2012, there was discussion of whether the Sixth Draft of the Delta Plan should include a new Policy related to water quality. Council staff recommended a potential Policy, as well as alternative recommendations, which were provided in Agenda Item 9a Table One: "Major Comments for the 5th Staff Draft Delta Plan and Proposed Alternatives for Addressing Comments". Some Council members present at that meeting questioned the value of such a Policy, and recommended relying on the State and Regional Water Boards regulatory authority to ensure adequate water quality standards are met for the protection of the coequal goals. Ultimately the Council directed staff to prepare a write-up on the issue. Sacramento Regional County Sanitation District's (SRCSD) staff addressed the Council explaining briefly that the District agrees that a Policy is unnecessary or inapplicable, and offered to provide SRCSD's views by letter; therefore SRCSD respectfully requests your consideration of the following.

The District is motivated to assist the Council in the constructive consideration of this issue, even though we do not necessarily anticipate that SRCSD would be a local agency much affected by such a Policy in the Delta Plan. For example, the ongoing operation of and discharge from SRCSD's Sacramento Regional Wastewater Treatment Plant (SRWTP) is not a "covered action", and the Central Valley Regional Water Quality Control Board's periodic renewal of the NPDES permit for the SRWTP is not a covered action. However, SRCSD understands that some projects could be undertaken in the future that would be a covered action.

Phil Isenberg, Chairman and Council Members
Re: Policies of the Delta Plan
April 6, 2012
Page 2

Under the Delta Plan, a “Policy” is of special significance. Specifically, Policies are regulatory in nature, not just statements or a general course of action or thought. Rather, Delta Plan Policies are a required consideration for local agencies (or state agencies) approving a covered action and a local agency must certify that the covered action is consistent with Delta Plan Policies. And, of course, there is a right of appeal to the Council for those who disagree with a consistency determination.

Considering the role and function of Delta Plan Policies, SRCSD submits the following three questions to consider in evaluating any proposed Policy:

- 1) What need exists for having a Policy,
- 2) Does the proposed Policy address that need, and
- 3) Will the Policy be functional and effective?

With respect to the first question, the appropriate inquiry with respect to water quality is, realistically, whether there is some regulatory gap that needs to be filled. We believe this is extremely unlikely. The Clean Water Act and its implementing regulations and the Porter-Cologne Water Quality Control Act contain robust authorities and requirements related to promulgation of water quality standards, permitting and enforcement, and establish obligations and liabilities for persons whose activities may affect water quality. SRCSD cannot identify a need to be filled by requiring local or state agencies to determine consistency with a Water Quality Policy or by requiring them to determine whether a project is consistent with Regional Water Board and/or State Water Board requirements. The Regional Water Board, State Water Board, and U.S. EPA were created in order to deal with such issues and their staffs are trained for that purpose.

As to the second question, we believe it very unlikely that a new Delta Plan “Policy” and the attendant consistency determinations would meet any need that might currently be unmet. In part, this is because we do not perceive that a need exists. But in addition, there are inherent limitations on what a Policy could accomplish. For example, Delta water quality is influenced by a host of activities that occur throughout the drainages of the enormous Sacramento-San Joaquin watersheds. Such activities may include “discharges” that are most traditionally associated with water quality regulation. They can include an array or others, ranging all the way to reservoir operations that may affect salinity concentrations in the Delta. Since the vast majority of these activities do not occur in whole or in part in the Delta, and potentially for additional reasons, they are not “covered actions” and thus would not be subject to the proposed Water Quality Policy. Similarly, even a great many activities that do occur within the Delta are not covered actions. For example, some parties may consider agricultural drainage from Delta islands to be an important water quality issue. But there is no “covered action” associated with such activities. It bears noting, however, that all the types of activities discussed above—whether occurring in the Delta or not—are subject to the regulatory authority of the Regional Water Board, State Water Board, or both.

Phil Isenberg, Chairman and Council Members
Re: Policies of the Delta Plan
April 6, 2012
Page 3

As to the third question, we believe that the potential Water Quality Policy that has been identified by Council staff would not be functional or effective. It would be very difficult for most local agencies to know how to apply the proposed Policy language in a consistency determination. For example, the potential Policy that has been identified begins with the following: "Water quality in the Delta should be maintained at a level that supports and enhances beneficial uses as identified in the applicable RWQCB and SWRCB water quality control plans." There are several issues that could be raised about this statement relevant to existing laws, but at minimum a local agency is unlikely to know how to make a consistency determination based on this sentence and it is not likely that the determinations would be uniform.

We also believe the Council should consider practical realities. For example, there could be a potential new development project in the Delta that requires approval from a local agency. Assuming that project is a covered action, the approving local agency, if it is a municipal government, likely holds a discharge permit for its stormwater discharges that requires reduction of pollutant discharges to the "maximum extent practicable" in accordance with the Clean Water Act. In turn, this discharge permit may require the municipality to impose water quality-related conditions on the development. Moreover, whether or not the approving local agency has a discharge permit covering stormwater discharge in its jurisdiction, the project proponent is required by law to obtain a discharge permit or coverage under a general discharge permit for construction activities, if the project will disturb any significant land area. The proposed Policy presented to the Council would provide that covered actions avoid or mitigate water quality impacts to the maximum extent practicable, and that this could be demonstrated by compliance with basin plans and permits. Local agencies are not well suited to judge whether a project they approve will in the future comply with a permit the developer obtains in the future. Agencies such as the Regional Water Boards have been created for this exact purpose.

Considering the factors we have suggested, we submit that it is extraordinarily unlikely that a Water Quality Policy comparable to the option presented could or would have any meaningful consequence for Delta water quality.

At the March 30 meeting, Council staff referred to water quality Policies of the Bay Conservation and Development Commission (BCDC). While we have no direct experience with the BCDC, the situation does not appear comparable. An immediate difference between the Council and BCDC is that the BCDC is itself a permitting agency. In our understanding, the BCDC, first established nearly 50 years ago, has authority to allow the placement of fill in certain waters or the extraction of material from certain waters within its jurisdictional area, and BCDC permits are required for some of this type of activity. Also, while BCDC permitting decisions may consider water quality impacts, this does not appear to be because there is, or is perceived to be, a gap or deficiency in the normal water quality regulatory scheme that applies statewide. The BCDC was created in 1965, the Legislature then finding that there was "uncoordinated, haphazard filling in San Francisco Bay". (Gov. Code, § 66601). The Legislature established a structure "to create a politically-responsible, democratic process by

Phil Isenberg, Chairman and Council Members
Re: Policies of the Delta Plan
April 6, 2012
Page 4

which the San Francisco Bay and its shoreline can be analyzed, planned, and regulated as a unit.” (Gov. Code, § 66600.) Water quality was one of many concerns motivating the formation of BCDC, but it bears noting that the agency was created before the adoption of Porter-Cologne or what we know as the Clean Water Act. Thus, while the BCDC permitting process does consider water quality, amendments to the law adopted in 1991 provide that the State Water Board and San Francisco Regional Water Board’s “policies, decisions, advice, and authority” are the primary basis for the BCDC to carry out its water quality responsibilities. (Gov. Code, § 66646.1.) The Council does not perform the function of the BCDC, and Delta Plan “Policies” create requirements for the consistency determinations of local agencies, not permitting decisions of the Council.

In summary, SRCSD does not believe there is a need to, or value in, adding a new Policy to the Delta Plan concerning water quality. As noted above, the “options” recently presented by Council staff also included “recommendations” that could be added to those recommendations that were included in the Fifth Draft of the Delta Plan. Again, we do not believe that the need for, or value of, such recommendations has been established. For example, one option was to “engage the SRCSD and the RWQCBs to develop new language to be placed in [basin plans] to ensure the protection of the coequal goals.” While there are several comments that could be made, an unstated assumption of such a “recommendation” in the Delta Plan would be that the basin plans do not currently contain “language” that addresses the coequal goals relating to water quality. Basin plan amendments are a resource-intensive process. Prior to Council consideration of a recommendation that it “shall engage” in a process to amend basin plans, it should conduct a thorough evaluation of the existing basin plans and any related regulatory materials (such as the numeric water quality criteria for toxic pollutants promulgated by U.S. EPA for California waters, known as the California Toxics Rule). It would not be correct or logical to presuppose that there is presently a deficiency in the State Water Board Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, Central Valley Regional Water Board Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, or the San Francisco Bay Regional Water Board Water Quality Control Plan for the San Francisco Bay Basin.

Finally, another “option” identified by Council staff is a recommendation that the Council: “participate in the SWRCB and RWQCB permitting process. The DSC shall make specific recommendations on any discharge permits or waivers the SWRCB or RWQCB may issue within the Delta.” Such a recommendation would be quite broad, requiring participation in every single permit process. As a policy matter, we urge the Council to avoid redundancy of staff efforts with the Regional Water Board and State Water Board (and other agencies). We are mindful, of course, that the Council made itself heard in SRCSD’s permit renewal process in late 2010. This occurred without a Delta Plan having been adopted. The authority and appropriate role for the Council in any given proceeding of another agency is likely to be a matter of case-by-case consideration.

Phil Isenberg, Chairman and Council Members
Re: Policies of the Delta Plan
April 6, 2012
Page 5

Thank you for considering these comments. Please contact me at, 916-876-6030, dornl@sacsewer.com, if you have any questions or would like additional information.

Sincerely,



Linda Dorn
Environmental Program Manager

Cc: Terrie Mitchell, Legislative and Regulatory Affairs Manager
Prabhakar Somavarapu, Director Policy and Planning
Cindy Messner, Delta Plan Program Manager, Delta Stewardship Council
Joe Grindstaff, Executive Officer, Delta Stewardship Council