
State Water Resources Control Board

June 13, 2013

Mr. P. Joseph Grindstaff
Executive Officer
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Dear Mr. Grindstaff:

RE: COMMENTS ON FINAL STAFF DRAFT (SIXTH DRAFT) DELTA PLAN

State Water Resources Control Board (State Water Board) and Central Valley Regional Water Quality Control Board (Central Valley Regional Water Board), (collectively Water Boards) staff have reviewed the Final Staff Draft Delta Plan (Plan) and have comments and suggestions regarding the draft Plan's descriptions of Water Board authorities and programs, as well as the draft Plan's recommendations for future activities. Our comments and suggestions are organized by draft Plan chapter. Suggested changes to the draft Plan are provided in underline and strikeout.

Executive Summary

What the Delta Plan Does

The Plan states:

"Through its policies and recommendations, the Delta Plan:

- Protects and enhances the Delta ecosystem by identifying and protecting high-priority restoration areas and setting a deadline for the State Water Resources Control Board to support the coequal goals by updating flow standards for the major rivers and tributaries of the Delta." (P. 5, lines 38-40)

Comment: Water Boards staff suggests the following wording change for this statement:

"Protects and enhances the Delta ecosystem by identifying and protecting high-priority restoration areas and setting a deadline for the State Water Resources Control Board to take actions that support the coequal goals by updating ~~flow standards~~ water quality objectives, including flow objectives, for the major rivers and tributaries of the Delta."

Chapter 1: Introduction

The Delta and California's Water Supply

The Plan states:

“Although groundwater and surface water are often interconnected, the SWRCB has limited authority to regulate groundwater.” (P. 12, lines 27-28)

Comment: As mentioned in our comments on the fourth draft Plan, Water Board staff recommends the draft Plan make reference to the Water Boards' plan to develop a Strategic Workplan for Groundwater (Groundwater Workplan) that will lay out the Water Boards' plans to protect groundwater. The Groundwater Workplan will likely include actions to: (1) apply the Water Boards' water quality and water rights authorities to address the problems that have the greatest potential to impact beneficial uses of groundwater; (2) focus resources on the most important problems; and (3) encourage efforts to protect and manage groundwater at the local or regional level. Water Boards staff anticipate presenting the Groundwater Workplan to the State Water Board in 2012.

The Plan States:

“The Delta Plan's policies and recommendations are based on the following lessons learned (P. 21, line 1):

- **Commit to Delta ecosystem restoration.** We must preserve land in the Delta for future habitat restoration, and we must immediately begin restoration efforts on long-studied priority areas. In the Delta, the conflict between the way we move water and the health of native species must be resolved. A successfully permitted BDCP is key to that, including flow standards updated by the SWRCB for beneficial uses including the Delta's ecosystem. Without adequate water flow (the right mix of timing and amount), we cannot expect fisheries to recover no matter how well we deal with the range of other stressors. (P. 21, lines 15-21)

Comment: Water Boards staff suggests the following change to this text:

“We must preserve land in the Delta for future habitat restoration, and we must immediately begin restoration efforts on long-studied priority areas. In the Delta, the conflict between the way we move water and the health of native species must be resolved. A successfully permitted BDCP is key to that, including ~~flow standards~~ updated water quality and flow objectives by the SWRCB to ensure reasonable protection of ~~for~~ beneficial uses ~~including~~ for the Delta's ecosystem. Without adequate water flow (the right mix of timing and amount), we cannot expect fisheries to recover no matter how well we deal with the range of other stressors.”

- **Protects and enhances the Delta ecosystem** by identifying and protecting high-priority restoration areas and setting a deadline for the SWRCB to support the coequal goals by updating flow standards for the major rivers and tributaries of the Delta.” (P. 21, lines 33-35)

Comment: Water Boards staff suggests the following changes to this text:

“by identifying and protecting high-priority restoration areas and setting a deadline for the SWRCB to take actions that support the coequal goals by updating ~~flow standards~~ water quality objectives, including flow objectives, for the major rivers and tributaries of the Delta.”

Chapter 2: The Delta Plan

Agencies with Responsibilities in the Delta (Table 2-1, P. 37)

Comment: Water Boards staff recommends the following changes to Table 2-1:

Required to develop in 2010 non-regulatory flow criteria for the Delta ecosystem necessary to protect public trust uses in order to inform future planning proceedings for the Delta Plan and BDCP. Responsible for developing and implementing the Bay-Delta Plan to establish and adopt criteria describing the flows deemed necessary to maintain water quality standards and protect public trust resources in the Delta. ~~water quality objectives, including flow objectives, to ensure reasonable protection of beneficial uses in the Bay-Delta.~~ Responsible for establishing, implementing and enforcing ~~Enforce~~ water right requirements to and ensure the proper allocation and efficient use/ diversion of water in and out of Delta, including the role of the Delta Watermaster and implementation of the Bay-Delta Plan. Along with Regional Boards, responsible for ~~D~~developing and implementing other water quality standards and control plans consistent with state and federal law to reasonably protect aquatic beneficial uses in the Delta.

G R1 Development of a Delta Science Plan:

The Plan States:

“The Delta Stewardship Council’s Delta Science Program should develop a Delta Science Plan by December 31, 2013. The Delta Science Program should work with the Interagency Ecological Program, Bay Delta Conservation Plan, California Department of Fish and Game and other agencies to develop the Delta Science Plan.” (P. 57, lines 17-21).

Comment: Please list the State and Regional Water Boards as agencies to work with in the development of the Delta Science Plan rather than grouping it into the category of “other agencies.”

Chapter 3: A More Reliable Water Supply for California

Delta Operations

The Plan states:

“Today, CVP and SWP facilities within the Delta operate in accordance with a complex web of permits, licenses, and, more recently, court orders that impose explicit conditions on how, when, and how much water can be exported from the Delta. Some of the major players in regulation of water project operations in and upstream of the Delta include:

- The SWRCB and regional boards require the SWP and CVP to meet specific water quality criteria that result in operational standards within the Delta and the

Delta watershed. The SWRCB also sets instream flow standards.” (P. 84, lines 19-25)

Comment: Water Boards staff suggests modifying this bullet as follows:

~~*The SWRCB and regional boards require t*~~ *“The SWP and CVP are required to comply with meet-specific water quality, criteria and flow, and operational criteriarequirements in the Delta and Delta watershed established by the State and Regional Water Boards to protect beneficial uses and other legal users of water, that result in operational standards within the Delta and the Delta watershed. The SWRCB also sets instream flow standards.”*

The Plan States, in part:

“... The SWRCB has initiated a phased process to review and amend—or to adopt new—water quality and flow objectives for the Delta by 2014. The SWRCB is also reviewing the San Joaquin River flow and southern Delta water quality objectives.” (P. 84, lines 41-44)

Comment: Water Boards staff recommends the following modified language:

“The SWRCB has initiated a phased process to review and amend—or to adopt new—water quality and flow objectives for the Delta by 2014. The SWRCB is also reviewing Phase 1 of that review is focused on southern Delta water quality and San Joaquin River flows. Phase 2 is focused on other changes that may be needed to the remainder of the Bay-Delta Plan to protect fish and wildlife beneficial uses.”

WR R3 Compliance with Reasonable and Beneficial Use

The Plan States:

“The State Water Resources Control Board should evaluate all applications and petitions for a new water right or a new or changed point of diversion, place of use, or purpose of use that would result in new or increased long-term average use of water from the Delta watershed for consistency with the constitutional principle of reasonable and beneficial use. The State Board should conduct its evaluation consistent with Water Code sections 85021, 85023, 85031 and other provisions of California law. An applicant or petitioner should submit to the State Board sufficient information to support findings of consistency, including, as applicable, its Urban Water Management Plan, Agricultural Water Management Plan, and environmental documents prepared pursuant to CEQA.” (P. 101, lines 13-22)

Comment: Thank you for revising the draft Plan to address Water Boards staff comments provided on the fifth draft. Water Boards staff has no further comments on this statement.

WR R7 Revise State Grant and Loan Priorities

The Plan States, in part:

“... in consultation with other agencies and the Delta Stewardship Council, the State Water Resources Control Board should revise State grant and loan ranking criteria by December 31, 2013...” (P. 102, lines 9-15)

Comment: Thank you for revising the draft Plan to address Water Boards staff comments provided on the fifth draft. Water Boards staff has no further comments on this statement.

WR R14 Identify Near Term Opportunities for Storage, Use and Water Transfer Projects

The Plan states, in part:

“... in coordination with other agencies and stakeholders, the State Water Resources Control Board should conduct a survey to identify projects throughout California that could be implemented within the next 5 to 10 years to expand existing surface and groundwater storage facilities, create new storage, improve operation of existing Delta conveyance facilities, and enhance opportunities for conjunctive use programs and water transfers in furtherance of coequal goals...” (P. 104, lines 22-31)

Comment: Water Boards staff recommends inserting text stating that these projects should be both economically and technically feasible.

Chapter 4: Protect, Restore, and Enhance the Delta Ecosystem

Current Delta Ecosystem Restoration Efforts (Table, P. 128)

The Plan States:

“Several significant ecosystem restoration planning and implementation efforts are now being advanced by multiple entities...”

The State Water Resources Control Board (SWRCB) is updating its Bay-Delta Water Quality Control Plan (Bay-Delta Plan). The update focuses on south Delta salinity standards, San Joaquin River flow objectives, Delta outflow objectives, export/inflow objectives, Delta Cross Channel Gate closure objectives, Suisun Marsh objectives, potential new reverse flow objectives for Old and Middle rivers, potential new floodplain habitat flow objectives, potential changes to the monitoring and special studies program, and other potential changes to the program of implementation. The SWRCB recently released a report containing guidance for flow aspects of ecosystem restoration titled Development of Flow Criteria for the Sacramento–San Joaquin Delta Ecosystem (SWRCB 2010).”

Comment: Water Boards staff recommends the following modifications to this language:

The State Water Resources Control Board (SWRCB) is updating its Bay-Delta Water Quality Control Plan (Bay-Delta Plan). ~~The update focuses on~~The first phase of that update focuses on water quality objectives for the protection of southern Delta agriculture salinity standards and San Joaquin River flow objectives for the protection of fish and wildlife. The second phase focuses on other changes to the Bay-Delta Plan to protect fish and wildlife beneficial uses including: Delta outflow objectives, Sacramento River flows, export/inflow objectives, Delta Cross Channel Gate closure objectives, Suisun Marsh objectives, potential new reverse flow objectives for Old and Middle rivers, potential new floodplain habitat flow objectives, potential changes to the monitoring and special studies program, and other potential changes to the program of implementation, and issues identified through the BDCP process. As part of the State Water Board’s review of the Bay-Delta Plan, the State Water Board will consider information developed as part of its August 2, 2010, staff technical a report containing guidance for flow aspects of ecosystem restoration titled “Development of Flow Criteria for the Sacramento–San Joaquin Delta Ecosystem” (SWRCB

2010) along with information concerning other factors that were not considered in that report including cold water pool needs and competing uses of water.”

ER P1 Update Delta Flow Objectives (P. 146, lines 2-18)

The Plan States:

“Development, implementation, and enforcement of new and updated flow objectives for the Delta and high priority tributaries are key to the achievement of the coequal goals. The State Water Resources Control Board should update the Bay-Delta Water Quality Control Plan objectives as follows:

- a) By June 2, 2014, adopt and implement updated flow objectives for the Delta that are necessary to achieve the coequal goals.
- b) By June 2, 2018, adopt, and as soon as reasonably possible, implement flow objectives for high-priority tributaries in the Delta watershed that are necessary to achieve the coequal goals.²⁰

Flow objectives could be implemented through several mechanisms including negotiation and settlement, FERC relicensing or water rights hearing.²¹

Prior to the establishment of revised flow objectives identified above, the existing Bay Delta Water Quality Control Plan objectives shall be used to determine consistency with the Delta Plan. After the flow objectives are revised, the revised objectives shall be used to determine consistency with the Delta Plan.

This policy covers a proposed action that could affect flow in the Delta.”

Comment regarding a) and b): As described in our comments above regarding Current Delta Ecosystem Restoration Efforts, the State Water Board is phasing its review of the Bay-Delta Plan as follows:

- I. Review and update of the Bay-Delta Plan’s San Joaquin River flow and southern Delta water quality requirements;*
- II. Review and update of remainder of the Bay-Delta Plan;*
- III. Implementation of the Bay-Delta Plan, following adoption of Bay-Delta Plan updates, through water rights, conditions of water quality certification for relicensing of hydroelectric projects, or other measures;*
- IV. Development and implementation of instream flow requirements for priority Delta tributaries, pursuant to the Sacramento-San Joaquin Delta Reform Act of 2009 (Wat. Code, § 85087.).*

Footnote 20 in ER P1 states:

“SWRCB staff will work with the Council to determine priority streams. As an illustrative example, priority streams could include the Merced River, Tuolumne River, Stanislaus River, Lower San Joaquin River, Deer Creek (tributary to Sacramento River), Lower Butte Creek, Mill Creek (tributary to Sacramento River), Cosumnes River, and American River (SWRCB 2011a, SWRCB 2011b). Implementation through hearings is expected to take longer than the deadline shown here.”

Comments:

- (1) *Per Water Board staff's comments on the Draft EIR for the 5th Draft of the Delta Plan, please include the following wording change to footnote 20:
"SWRCB staff will work with the Delta Stewardship Council and DFG to determine priority streams. As an illustrative example, priority streams could include the Merced River, Tuolumne River, Stanislaus River, Lower San Joaquin River, Deer Creek (tributary to Sacramento River), Lower Butte Creek, Mill Creek (tributary to Sacramento River), Cosumnes River, and American River (SWRCB 2011a, SWRCB 2011b).*
- (2) *Please augment the text in footnote 21 to indicate that implementation through FERC relicensing could also take longer than the deadline. FERC relicensing only occurs when a hydroelectric license is about to expire. Each relicensing proceeding takes approximately 5.5 years and licenses are valid for up to 50 years.*
- (3) *Water Boards staff also suggests the inclusion of the acronym for FERC in the Acronyms and Abbreviations Table.*

ER P1: Update Delta Flow Objectives (P. 146, lines 2-18) and Output Performance Measures (P. 156, lines 26-36)

Water Boards staff's February 2, 2012 comment letter on the Delta Plan Draft EIR provided information concerning the Department of Fish and Game's (DFG) responsibilities for developing flow recommendations throughout the state. Water Boards staff suggested that the Delta Plan include text describing DFG's role which would provide additional background information and recognize the DFG's important role in successfully implementing this policy by developing flow recommendations and conducting instream flow studies for high-priority tributaries in the Delta watershed.

Comment: Water Boards staff recommends appending the language in ER P1 as follows:

"DFG is required by the Public Resources Code (sections 10000-10005) to develop flow recommendations for watercourses and streams throughout the state for which minimum flow levels need to be established in order to assure the continued viability of fish and wildlife resources. These flow recommendations are considered by the State Water Board in regulatory actions related to appropriation of water and other planning activities.

Per 2009 legislation (SBX7 1), DFG is conducting instream flow studies for high-priority tributaries in the Delta watershed in order to develop flow recommendations. These flow recommendations will inform the State Water Board's development of flow criteria."

Water Boards staff also recommends that the Output Performance Measures section for ER P1 include text recognizing DFG's role in developing flow recommendations throughout the state.

Chapter 6: Improve Water Quality to Protect Human Health and the Environment

Existing Water Quality Regulations

The Plan States:

“TMDLs are implemented through amendments to the appropriate Basin Plan, which, in turn, will result in improved discharge permits as they are reissued.” (P. 211, lines 40-41)

Comment: Water Boards staff recommends the following modified language:

TMDLs are usually implemented through amendments to the appropriate Basin Plan, which, in turn, will result in changes to improved discharge permits as they are reissued.

Nutrients

The Plan states:

“**Nutrient Ratios.** Ratios of nutrients in Delta waters are thought to be a primary driver in the composition of aquatic food webs in the Bay-Delta (Glibert et al. 2011). The effect of ammonium on food webs in the Delta remains an open question with much active research and healthy scientific debate.” (P. 221, lines 13-16)

Comment: Water Boards staff recommends the following modified language:

Ratios of nutrients in Delta waters ~~are thought to be a primary driver in~~ may play a role in determining the composition of aquatic food webs in the Bay-Delta (Glibert et al. 2011). ~~The effect of ammonium on food webs in the Delta remains an open question with much active research and healthy scientific debate.~~ More study is needed to define the influence that nutrient ratios and nutrient concentrations have on Delta aquatic food webs.

Dissolved Oxygen

The Plan states:

“... DO events occur regularly in the channels of Suisun Marsh and the Stockton Deepwater Ship Channel and sporadically elsewhere in the Delta, with several waterways listed as impaired by the RWQCB.” (P. 221, lines 41-43)

Comment: Since the upgrade of the Stockton Waste Water Treatment Plant, low DO events are no longer regular.

The Plan states:

“As TMDLs are developed to address low DO concentrations in the Delta, actions needed to improve DO conditions will be implemented through SWRCB and regional water quality control board programs, including NPDES permits, stormwater permits, the Irrigated Lands Regulatory Program, and water rights.” (P. 224, lines 19-22)

Comment: Water Boards staff recommends the following modified language for this sentence:

“...including NPDES permits, stormwater NPDES permits, ~~the Irrigated Lands Regulatory Program, WDRs, waivers of WDRs,~~ and water rights.”

Water Quality

The Plan states:

- “. . . ammonium concentrations may be having a significant impact on phytoplankton composition and open-water food webs because of suppression of diatom blooms in the Bay-Delta (Dugdale et al. 2007).” (P. 221, lines 7-9)
- “Pyrethroid pesticides largely derived from urban and suburban runoff are regularly found at toxic levels to aquatic invertebrates (Weston et al. 2005 and Weston 2010).” (P. 224, lines 45-46)

Comment: Ammonium and pyrethroid pesticides are listed as water quality concerns. The statement about pyrethroids is a little misleading because it implies widespread toxicity is regularly found, and by excluding agriculture, seems to imply that agricultural runoff is not a concern. Some select studies with targeted monitoring have found toxicity due to pyrethroids. SWRCB staff recommends the following modifications to this language:

Pyrethroid pesticides largely derived from urban and suburban runoff are regularly found at toxic levels to aquatic invertebrates (Weston et al. 2005 and Weston 2010). Pyrethroid pesticides from multiple run off sources have been found at toxic levels to aquatic invertebrates (Weston et al. 2005 and Weston 2010).

Contaminants of Emerging Concern

The Plan States:

“To this end, in 2009 the SWRCB established a Science Advisory Panel to address contaminants of emerging concern in accordance with their Recycled Water Policy. The panel completed a report in 2010 that included several recommendations for how the SWRCB should monitor and assess potential impacts of contaminants of emerging concern (SWRCB 2010b).” (P. 226, lines 43-45 and P. 227, lines 1-2)

Comment: Water Boards staff recommends the following modifications to this language:

“To this end, in ~~2009~~ 2011 the SWRCB established a Science Advisory Panel in coordination with the Packard Foundation to address contaminants of emerging concern in accordance with their Recycled Water Policy aquatic ecosystems. The panel completed a report in ~~2010~~ April 2012 that included several recommendations for how the SWRCB should monitor and assess potential impacts of contaminants of emerging concern. (~~SWRCB 2010b~~ Anderson, P.D et.al. 2012).”

*Reference - Anderson P.D., N.D. Denslow, J.E.Drewes, A.W. Olivieri, D. Schlenk, G.I Scott, S.A. Snyder. 2012. Technical Report 692. **Monitoring Strategies for Chemicals of Emerging Concern (CECs) in California’s Aquatic Ecosystems: Recommendations of a Science Advisory Panel.** SCCWRP.*

WQ R6 Protect Groundwater Beneficial Uses

The Plan States:

“The State Water Resources Control Board should complete development of a Strategic Workplan for protection of groundwater beneficial uses, including groundwater use for drinking water, by December 31, 2012.” (P. 229, lines 4-7)

Comment: Water Boards staff requests to extend the due date for completion of this plan to March 31, 2013.

WQ R8 Completion of Regulatory Processes, Research, and Monitoring for Water Quality Improvements

The Plan States:

“The State Water Resources Control Board and the San Francisco Bay and Central Valley Regional Water Quality Control Boards are currently engaged in regulatory processes, research, and monitoring essential to improving water quality in the Delta. In order to achieve the coequal goals, it is essential that these ongoing efforts be completed and if possible accelerated, and that the Legislature and Governor devote sufficient funding to make this possible.”

The Delta Stewardship Council specifically recommends the following bullets:

- ◆ “The State Water Resources Control Board should complete development of the proposed Policy for nutrients for Inland Surface Waters of the State of California by January 1, 2014.” (P. 229, lines 30-39)

Comment: The current project schedule anticipates that the State Water Board will consider the policy for adoption in March 2014. Assuming adoption, the policy will be submitted to OAL and EPA for approval, likely by June 2014. To reflect this, Water Boards staff recommends extending the completion date of this project to July 1, 2014.

- ◆ “The State Water Resources Control Board and the San Francisco Bay and Central Valley Regional Water Quality Control Boards should prepare and begin implementation of a study plan for the development of objectives, for nutrients in the Delta and Suisun Marsh by January 1, 2013.” (P. 230, lines 1-4)

Comment: Less than one year is insufficient time to develop a nutrient study plan for the Delta. This is a very complex system and would require more time to develop a reasonable plan. Additionally, funding sources for this project have not yet been identified. Water Boards staff recommends extending the due date to January 1, 2014.

- ◆ “The State Water Resources Control Board and the Central Valley Regional Water Quality Control Board should complete the Central Valley Pesticide Total Maximum Daily Load and Basin Plan Amendment for diazinon and chlorpyrifos by January 1, 2013.”(P. 230, lines 8-10)

Comment: The State Water Board Meeting schedule for 2013 is not yet determined, but it is unlikely that the Board will meet in January. Although we anticipate a Board meeting to be scheduled for February, we do not know what dates will be selected. Water Boards staff suggests extending the due date to March 1, 2013.

WQ R11 Manage Dissolved Oxygen in Stockton Ship Channel

The Plan States:

“The State Water Resources Control Board and the Central Valley Regional Water Quality Control Board should complete Phase 2 of the Total Maximum Daily Load and Basin Plan Amendment for dissolved oxygen in the Stockton Ship Channel by January 1, 2013.” (P. 231, lines 1-4)

Comment: This time line is not feasible. The remaining (downstream) studies that will allow Regional Board staff to reevaluate the TMDL will not be complete for over a year. Completion of Phase 2 may be possible by 2016.

Chapter 4: Issues for Future Evaluation and Coordination

The Plan states:

◆ **“Small and disadvantaged communities:** Ensuring a safe drinking water supply can have a disproportionate cost for small and disadvantaged communities. Availability and prioritization of funding, restructuring of regulatory requirements, and provision of technical assistance may all be part of the solution, but involve the authority of various agencies including the Department of Public Health, the SWRCB, and DWR. An integrated effort including the input and involvement of the regulatory and affected agencies will be needed to properly address these issues and to refine effective recommendations.” (P. 233, lines 4-10)

Comment: Thank you for revising the draft Plan to address Water Boards staff comments provided on the fifth draft. Water Boards staff has no further comments on this statement.

◆ **“Coordinated and prioritized water quality monitoring and modeling:** Various water quality monitoring and modeling efforts are ongoing, but are not coordinated among affected agencies. Agencies involved in these efforts include the SWRCB, RWQCBs, DWR, the Interagency Ecological Program, DFG, and now, the Council. Collective discussion and evaluation by these and other entities will be needed in order to make recommendations regarding the need for and prioritization of water quality modeling in the Delta.” (P. 233, lines 11-16)

Comment: Water Boards staff recommends that this section clarify that the establishment of a Delta Regional Monitoring Program (RMP) is a high priority for the State and Regional Water Boards.

The Water Boards appreciate the opportunity to provide comments concerning the Final Staff Draft Delta Plan. If you have any questions concerning these comments or would like to discuss any other issues associated with the Delta Plan, please contact me at (916) 341-5297 or driddle@waterboards.ca.gov.

Sincerely,

ORIGINAL SIGNED BY

Diane Riddle, Environmental Program Manager
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