



Department of Utilities
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April 22, 2013

Sent by US Mail and E-Mail

Ms. Cindy Messer
Delta Plan Program Manager
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento CA 95814
cindy.messner@deltacouncil.ca.gov

**Re: Modified Text of Proposed Regulations
Cal Code of Regulations, Title 23, Division 6
Delta Stewardship Council**

Dear Ms. Messer:

We at the City of Sacramento Department of Utilities (Sacramento) appreciated the opportunity to meet with you, Keith Coolidge, and Carl Lischesky today. It was an informative and productive meeting, for which we thank you.

One of the topics of discussion at our meeting was the modified proposed Delta Stewardship Council regulations dated 4/4/2013. This has informed our understanding of the draft regulations' intent and contributed to the comments we now provide on the draft regulations, as set forth below.

As set forth in our comments on the first draft of these regulations, Sacramento provides a domestic water supply, wastewater collection and treatment services, and stormwater collection, management and discharge, for the residents and businesses of Sacramento. Sacramento also provides water supply on a wholesale basis to neighboring areas, many of whom are otherwise reliant on groundwater only, in furtherance of conjunctive use and mitigation of groundwater contamination.

The draft regulations have been improved since the initial draft, which is appreciated. There remain, however, several areas that merit comment, as noted below.



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Sacramento's primary concern with the modified regulations relates to the provisions that call for reduced reliance on water from the Delta watershed. For example, under Section 5003 reduced reliance is to be achieved by water efficiency measures such as conservation, recycling, and groundwater management. Sacramento endorses and is moving forward with water efficiency measures as contemplated in the statute and regulations. Sacramento supports the tenet that where feasible and cost effective, these types of measures should be integrated into every water delivery system.

However, an important statutory directive that applies to both the statutory and regulatory scheme, including the reduced reliance provisions, is articulated in Water Code Section 85031. This statute makes it clear that these provisions, including the "expected outcome" provisions of Section 5003(c)(1)(C), are subject to California's area of origin and water right protections. This is essential for one of the dual goals of the Delta Plan –water supply reliability -- to have any meaning for water users in the watersheds tributary to the Delta.

During our meeting, you explained that Section 5003 applies to diversions from within the Delta, and not to diversions that occur outside of the Delta (regardless of where the water is used.) In order to reflect that in the regulations, Section 5003 (a) should be edited to read as follows:

Water shall not be exported from, transferred through, or used diverted at a location within, the Delta if all of the following apply: ...

Similarly, in subsections (1) through (3) immediately following the above text, the word "use" should be replaced with "diversion." Finally, in subsection (b), the word "use" should be replaced with "divert."

Although Sacramento does not divert within the Delta and is not subject to Section 5003, we believe that another important clarification of the regulations is needed. During our meeting, you provided us with an improved understanding of the intended meaning of Section 5003(c)(1)(C). You explained that Section 5003 allows for increased use of water from the Delta watershed, provided that the water efficiency measures described in subsections (c)(1)(B) and (c)(2) are being undertaken. This is important to concurrently improve water efficiency in the Delta watershed, and maintain a reliable water supply to support future economic development within that area, consistent with the area of origin and other water laws (see, e.g., Water Code Section 85031.) To reflect this, Section 5003(c)(1)(C) should be edited to read as follows:

(C) Included in the Plan, commencing in 2015, the expected outcome for measurable reduction in Delta reliance and improvement in regional self-reliance shall be reported in the Plan as the reduction in the amount of water used, or in the percentage of water used, from the Delta watershed by comparison to the amount of water that would have been used absent the programs and projects referenced in subsection (B) above. For

the purposes of reporting, water conservation and other water use efficiencies ~~is~~ are considered a new source of water supply, consistent with Water Code Section 1011.

On a related note, to be consistent with the reference in Section 5003 (c)(1)(B) to programs and projects "that are locally cost effective and technically feasible," the beginning of the second sentence of Section 5001(h)(1)(B) should be revised to read as follows:

This will be done by improving, investing in, and implementing locally cost effective and technically feasible local and regional projects and programs that increase ...

Some provisions continue to suffer from inconsistency with the APA standards regarding necessity, nonduplication, and consistency (see, e.g., Government Code Sections 11349(a) and 11349(f).) One example of this is the statement in Section 5001(dd)(3) of what the "Council contemplates" will happen. A narrative description of what the Council anticipates may be appropriate in the Plan, but does not belong in APA regulations. As another example, some definitions continue to exhibit a mixture of definitional language and lengthy regulatory provisions that makes it difficult to interpret where the definition ends and the regulatory requirements begin, as noted in prior comments.

The definition of "significant impact" in Section 5001(dd) should be brought into consistency with the definition found in CEQA Guidelines Section 15382. This is called for under Water Code Sections 85031 and 85032, as well as making good common sense.

Section 5001(dd)(3) initially removes one year transfers from the definition of "covered action", then sunsets that removal arbitrarily on January 1, 2017. This conflicts with Water Code Section 1729, and the statement that one year transfers will not have a significant impact. The Legislature's exemption of such transfers from CEQA should be honored.

In our meeting today we discussed the implementation schedule for some of the recommendations. Sacramento offers the following thoughts on schedule:

Sacramento recommends that the DSC update the due date for the evaluation recommended in WQ R10, Evaluate Wastewater Recycling, Reuse, or Treatment from January 1, 2014 to January 1, 2017 or 3 years from when the Delta Plan goes into effect, whichever is sooner. More time is necessary to perform a meaningful evaluation and to allow a regional collaborative approach. Interagency discussion is a key component to assessing feasibility.

More time should be allotted for the WQ R8 recommendations for a study plan and completion of the studies for Delta nutrient objectives. The Delta Plan currently recommends a due date of January 1, 2014 for the study plan, and January 1, 2016 for completion of the studies. We suggest that these dates be increased by at least one year. Issues related to nutrient management are complex in the Delta, and a scientifically sound and meaningful evaluation should include stakeholders and experts in the field. Adequate staffing and

Ms. Cindy Messer
Delta Stewardship Council
City of Sacramento Comments on Proposed Regulations
April 22, 2013
Page 4

resources for the Regional Board evaluation are also needed. These suggestions may not impact the overall schedule on this topic, but Regional Board staff should be given flexibility if the studies indicate that more time is necessary to develop effective objectives.

Thank you for the opportunity to provide comments on the modified regulations. If you have any questions, please contact Jim Peifer at (916) 808-1416.

Sincerely,



Dave Brent
Director of Utilities

FOR

Copy to: John Shirey, City Manager
John Woodling, Regional Water Authority