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Sent: Friday, May 13, 2011 3:50 PM
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Subject: EPA comments on 3rd draft of Delta Plan

Terry -

Thank you for the opportunity to comment on the Third Draft of the Delta Stewardship Council's Delta Plan (Third Draft). This Third Draft reflects a significant revision and major work effort since the previous draft. In our review, we have primarily attempted to identify potential direct conflicts with EPA programs. In response to DSC's requests at recent meetings with federal agencies in California and in Washington, D.C., we have also included a few broad comments about the overall direction of the Third Draft.

Specific Comments

(1) We have not identified any direct inconsistencies between the programs and policies outlined in the Third Draft and EPA's programs and mandates. As noted in our comments on the Second Draft, the Delta Plan is primarily a broad programmatic document without a lot of detail in many areas. Inconsistencies with federal Clean Water Act programs may not become apparent until more detailed versions of the Delta Plan are released or when specific projects or specific programs are implemented pursuant to the Delta Plan.

(2) We strongly support "WQ R6," which calls for the collaborative development of a Delta Regional Monitoring Program (DRMP). Lack of an effective system for comprehensively assessing Delta water quality has hindered our collective ability to identify and target the most significant water quality problems. A DRMP has been in its formative stages for some time. We believe the DRMP should be coordinated with similar monitoring efforts downstream in the Bay (the Regional Monitoring Program (RMP) coordinated by the San Francisco Estuary Institute) and upstream in the Sacramento (the Sacramento River Watershed Program's Water Monitoring Program) and San Joaquin watersheds, as well as with the Interagency Ecological Program.

(3) Chapter 7 includes an excellent discussion of flood and floodplain management, including (at pp. 88-89) several policies and recommendations regarding the need to protect floodplains. Our comment is a narrow one: FEMA's definition of floodplains (referenced in "RR-P3" and the accompanying footnote) may be too narrow for purposes of Delta planning. FEMA tends to exclude areas protected by levees from its working definition of flood zones or special flood hazard areas (areas having a 1% or greater chance of flood each year) (http://www.fema.gov/plan/prevent/floodplain/nfipkeywords/flood_zones.shtm). Doing so in the Delta, where most areas are protected by levees of some sort, would unnecessarily restrict the evaluation of floodplain management options. FEMA online flood maps show that some sub-sea level, levee-protected areas in the Delta are mapped as "Zone X", meaning they have less than a 0.2% chance of flood each year. (http://www.fema.gov/plan/prevent/floodplain/nfipkeywords/flood_zones.shtm) We believe that the Delta Plan should broaden its evaluation of potential floodplains to be protected to include historical floodplains or areas that have become natural floodplains by reason of modifications of Delta channels. This is consistent with the Delta Vision Strategic Plan that states: "Deep floodplains are sites in the floodplains of rivers (or below sea level) that are at least several feet below flood stage. Levee failures in such places result in deep inundation of people and property and can be catastrophic. Locations below sea level are especially risky as water will remain until levees are repaired and water pumped out" (Delta Vision Strategic Plan, page 110).

(4) The Third Draft, at page 79 and again at page 82, includes a discussion of the importance of salinity in the estuary. We agree with the conclusions regarding salinity variability, but believe that the discussion erroneously fails to consider other characteristics of the salinity regime. As noted in our recent

Advance Notice of Proposed Rulemaking (76 FR 9709 (02/22/11)), there is significant recent research suggesting that the reduction in low salinity habitat, especially in the fall, could be a driver for the decline of certain aquatic resources in the Delta. We recommend that the Council consider whether it should adopt some kind of performance measure of the areal extent of the low salinity zone throughout the year.

General Comments

(1) Watershed Approach We understand that the Delta Stewardship Council is a new agency within the State government and that there is debate about its proper jurisdiction. As a federal agency, we explicitly have no opinion on these issues. Nevertheless, we urge the Council to rely on a robust watershed approach to analyzing Delta issues and developing proposals guiding the Delta for the future. Many of the most serious issues facing the Delta – including flood protection, water quality protection, ecosystem restoration – simply cannot be properly evaluated and addressed without looking at the entire watershed. The many agencies that worked on Delta issues in the CALFED process recognized this necessity when they created concepts of the “problem area” (the Delta) and the “solution area” (a much broader area, depending on the issue).

(2) Identifying the Appropriate Flow Regime in the Delta The Third Draft, at page 49, includes a discussion of the need to identify the appropriate flow regime for the Delta and the major tributaries. The recent National Academy of Sciences review of the Draft Bay Delta Conservation Plan (Full Cite) reached a similar conclusion when it noted that “[c]larification of the volume of water to be diverted or mention of how it will be diverted is crucial to a scientific analysis.” (p. 31). The State Board, in its 2006 Periodic Review and its 2008 Strategic Workplan, identified Delta outflow (as well as flow requirements on major tributaries including the San Joaquin River) as a major effort for the near future. We support the Third Draft’s reliance on the State Board’s ongoing water quality and water rights processes as the best way to identify and achieve the appropriate flow regime in the Delta. We have also advised the BDCP process to consider the State Board’s flow recommendations in anticipation of final Board decisions on tributary and Delta outflow.

(3) Water Conveyance in the Delta Although there is not yet a consensus on the solution, the last decade seems to have developed a consensus that the current conveyance facilities, as operated, are meeting neither the environmental nor the water supply objectives for Delta resources. The obvious focus has been on the large state and federal export facilities, although changes to other water export facilities in the Delta are also under consideration. We believe the Council should consider adopting broad policies or recommendations for how changes in export conveyances are to be analyzed under the Delta Plan. Absent such policies or recommendations, conveyance planning will suffer from the same project-by-project ad hoc planning that has hampered comprehensive decision-making in recent years.

In closing, we feel compelled to compliment the Council on its public outreach effort. Although “transparency” has become a trendy buzzword lately, most agencies tend to give a nod to “transparency” by conducting a few public meetings. The Council, on the other hand, conducts all of its business in public and on the worldwide web. The Council has shown that enormously contentious issues can be addressed in an open way and has set a high bar for governmental accessibility.

Thank you again for the opportunity to comment on the draft Delta Plan as it evolves. We look forward to reviewing the next iteration. If you have any questions about our comments, please call me at (415)972-3945.

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