



Coalition for a Sustainable Delta

March 13, 2013

VIA E-MAIL

Dr. Richard B. Norgaard, Chair  
Delta Independent Science Panel  
c/o Delta Stewardship Council  
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Re: *Comments on Delta ISB draft memo regarding Bay Delta Conservation Plan Chapter 7*

Dear Dr. Norgaard:

The Delta Independent Science Board (ISB) developed a draft memorandum, dated February 12, 2013, regarding Chapter 7 of the draft Bay Delta Conservation Plan and posted the document for comment on the Delta Stewardship Council website. A meeting agenda for the ISB indicates that the document it reviewed is dated December 12, 2012 (<http://deltacouncil.ca.gov/event-detail/8492>). The draft memo explains that the review was prompted by a request from the Chair of the Delta Stewardship Council, Phil Isenberg, to the ISB.

We are writing in response to your request for comments on the draft memo. The Coalition for a Sustainable Delta is a California nonprofit corporation comprised of agricultural, municipal, and industrial water users, as well as individuals in the San Joaquin Valley. The Coalition and its members depend on water from the Sacramento-San Joaquin Delta (Delta) for their continued livelihood. Individual Coalition members frequently use the Delta for environmental, aesthetic, and recreational purposes; thus, the economic and non-economic interests of the Coalition and its members are dependent on a healthy and sustainable Delta ecosystem. The Coalition takes great interest in efforts to manage Bay-Delta ecosystems and the desired and protected species that depend on those systems.

To begin with, we question whether it is appropriate for the ISB to review a single, incomplete draft chapter of the yet-to-be-completed public draft Bay Delta Conservation Plan. For reasons we do not fully comprehend, although a public draft of the BDCP has yet to be released, various components of working drafts of the BDCP have been subjected to repeated independent science review by differing groups, including the National Research Council, this body, and other appointed panels over the past several years. In a number of instances, those plan components were incomplete, leading reviewers to question the purpose of their engagement. Those reviews frequently have been critical of the products subject to review, which is unsurprising given the complex subject matter and the fact that

the documents are incomplete. Given both limited agency resources to fund reviews and limited ISB time and resources, we believe that as a general matter the ISB should only review complete draft documents. That said, since the ISB has produced its draft memo at the request of the Chair of the Delta Stewardship Council, we offer several comments on the ISB review.

- The ISB's recommendation that the Delta Science Program (DSP) coordinate science and monitoring for adaptive management is sound provided the DSP has the institutional capacity to do so. Presently, the DSP is a skeleton program with inadequate staff and funding to coordinate science and monitoring for adaptive management. Nonetheless, from an institutional standpoint, it offers several advantages vis-à-vis other options. First, the DSP does not serve regulatory functions. It is sensible to separate oversight of monitoring, and data analysis from the process of regulating activities that may affect valued natural resources. Second, the DSP's core mission is production of high quality science. The DSP will not be pulled in different directions by competing mandates and the exercise of regulatory authorities. Third, the DSP is independent. Whereas the Interagency Ecological Program is composed of personnel drawn from the regulatory agencies, the DSP is free of the biases that may accompany either acting as a regulator or as a regulated entity.
- The ISB asks the question "how will the structure of the BDCP produce independent scientific advice?" The motivation for this question appears to be concern that the incidental take permit holders will exercise improper influence over the Program Manager, who will in turn exercise improper influence over the Science Manager. While it is impossible to eliminate risk of misconduct altogether, the risk in this instance is very low given the incentive structure and institutional controls. The incentive structure favors a robust data collection scheme and high quality empirical research, which allow permit holders to ascertain the relative success of conservation efforts and either adjust those efforts if they do not have anticipated benefits or reap the benefits of those efforts if they are successful. Institutional controls, including data collection and analysis by some combination of the DSP, regulatory agencies, and academics, as well as independent science review and the potential for permit revocation, also favor rigorous monitoring and high quality empirical research. Most large-scale conservation planning efforts, ranging from the Northwest Forest Plan to the lower Colorado Multiple Species Conservation Plan, rely on analogous incentive structures and sets of institutional controls.
- The ISB's contention that the water users' interests are at odds with an integrated monitoring program is false and misleading. We are unaware of how the ISB may have come by this notion. Through the State and Federal Water Contractors Agency, the water users have advocated for a comprehensive assessment of the existing monitoring program. Among other things, water users have argued that monitoring must be purpose oriented, must address explicit objectives, must be capable of

detecting salient environmental changes, and must provide quantitative results that can inform reliable management actions. Water users have further argued that, at the same time, it needs to be recognized that the extensive time-series data that have been generated from trawler-based fish surveys and a number of resource- and environmental variable-specific data-collection efforts have value in current and future management planning and policy development, and should be sustained at some level, and incorporated into a next generation of well-designed monitoring efforts. We are concerned that the ISB's contention is rooted in prejudice rather than knowledge. That said, we invite the ISB to provide evidence in support of its contention.

- The ISB's suggestion that the proposed BDCP governance structure favors "combat science" is puzzling, and it is unclear why the ISB invoked that phrase. It was either coined or popularized in the Delta by former ISB member Dr. Jeffrey Mount. Dr. Mount used it in a blog post disparaging retired United States District Court Judge Wanger as "the least qualified scientist in the Delta." (<http://californiawaterblog.com/2011/11/30/delta-science-in-a-post-wanger-world/>.) Dr. Mount states that combat science is "the stable of litigation." In a speech given to members of the California Bar, Dr. Mount defines combat science as "the selective use of facts or analyses to advance the political or legal position of one group and/or to disadvantage the position of another." Dr. Mount goes on to contend that "combat science is not science, because the goal is principally to win, not to advance understanding through the objective collection of facts and the testing of hypotheses."

Because it does not suit his argument, Dr. Mount failed to acknowledge that Judge Wanger was aided by two renowned fisheries experts (Drs. Andre Punt and Timothy Quinn), who were selected by consensus by all parties and acted as court-appointed experts. The combat science that Dr. Mount complains of included the determination by the Judge that in order to assess the impacts of an activity on the long-term survival of a species, it is appropriate to analyze the proportion of the population harmed by the activity rather than simply the raw number of individuals harmed without reference to the size and distribution of the population. Dr. Mount may not be aware of the fact that the Judge relied on the views of the court-appointed experts, as well as an independent peer review commissioned by the Fish and Wildlife Service, when reaching his decision. We contend that this holding by Judge Wanger is rooted in prevailing views in the scientific community.

In our view the solution to the problem of "combat science" is twofold: (i) improve the education and training of the personnel involved in the production, interpretation, and dissemination of scientific information and (ii) foster an environment where ideas can be openly challenged and debated. In the Delta, these steps have yet to be implemented.

- Finally, the ISB questions the need for a Stakeholder Council, suggesting that stakeholders have adequate venues to express their concerns, “including the Delta Stewardship Council, the Delta Conservancy, and the Delta Protection Commission.” Its recommendation in this regard is well outside its charge to advise with respect to the broad range of scientific programs that support adaptive management of the Delta. Further, it is unclear that the ISB, which includes just one social scientist and no members with expertise in law, management, organizational theory, political science, public administration, or public policy, is competent to address the issue. We question the appropriateness of the unsupported assertion that an excess of venues may tend to diminish public participation. In any event, there are ways to address this concern short of eliminating opportunities for public participation.

It is our hope that the ISB will take this constructive criticism in the spirit it is given. This body has the potential to exert great influence in the Delta, but it is dependent on the perception that the ISB is not yet another stakeholder embedded in a muddled multitude of policy disagreements over resource uses, which we must get past to successfully and sustainably manage the Delta’s damaged ecosystems. It’s hard to imagine a successful conservation outcome for the Delta absent sage scientific guidance from a politically neutral Independent Science Board.

Thank you for considering the Coalition’s comments.

Sincerely,



William D. Phillimore  
Board Member

cc: Chris Knopp, Executive Director, Delta Stewardship Council  
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