



LOIS M. SAHYOUN  
Clerk of the Board

## BOARD OF SUPERVISORS

44 N. SAN JOAQUIN STREET, SUITE 627  
STOCKTON, CALIFORNIA 95202  
TELEPHONE: 209/468-3113  
FAX: 209/468-3694

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July 30, 2010

Delta Stewardship Council Members  
P. Joseph Grindstaff, Interim Executive Officer  
650 Capitol Mall, Fifth Floor  
Sacramento, CA 95814

By E-mail

### **Comments to Delta Stewardship Council – Second Draft Interim Plan**

Dear Council Members and Mr. Grindstaff:

On behalf of the residents of San Joaquin County and the San Joaquin County Board of Supervisors we would like to thank you for the opportunity to submit comments on the Delta Stewardship Council's Second Draft Interim Plan. With nearly two-thirds of the Delta located within San Joaquin County, we are very concerned about the protection of water quantity and quality available within the Delta. We are equally concerned about the potential negative effects that additional planning processes may have, as evidenced by the Delta Vision and the continuing Bay Delta Conservation Plan (BDCP) process on the County's communities, land use, flood protection, infrastructure, agriculture, economy, recreation, wildlife, and our way of life. A summary of the County's comments are as follows:

#### **A. Best Available Science (*Second Draft, page 22, lines 12-31*)**

The Delta Risk Management Strategy (DRMS) does not fit the Draft Interim Plan definition of "best available science", yet DRMS is referenced repeatedly in the document and is the basis for much of the conclusions contained in the Draft, with respect to levee failure and repair (or non-repair, depending on the location of the levee).

#### **Recommendation:**

It is recommended that the reference to DRMS as "best available science" be deleted.

#### **B. Statutory Adoption of Objectives Inherent in Coequal Goals:**

##### **1. Policy Objective "b"; "Protect and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place." (*Second Draft, page 11, lines 8-9*)**

With nearly two-thirds of the Delta in San Joaquin County, any far-reaching changes to the Delta may seriously impact the way of life for area communities. In San Joaquin County alone, the gross value of agricultural production is projected to exceed \$2 billion in 2009. The Delta's fertile soil in combination

with a temperate climate has made the County one of the richest agricultural and dairy regions in California.

Furthermore, the County's location within the Delta enables the County to serve as a major shipping point for many of the agricultural and manufactured products of Northern California and is home to the State's first inland seaport located in the City of Stockton. Since the mid-nineteenth century, Stockton has been the region's transportation hub.

However, the quality of life for the San Joaquin County's residents, local businesses, industries, and the Delta on which we rely is in jeopardy.

Proposals developed under the Delta Vision and BDCP would change the Delta's physical structure, ecology, and water quantity and quality for the worse with the development of a peripheral canal or other isolated conveyance that will transport water from the Sacramento River directly to export facilities for use south of the Delta.

Despite the realization that the Delta ecosystem and its species are currently in decline, exports from the Delta have risen dramatically since the State Water Project (SWP) began deliveries in 1971. It would seem that the promise made to protect the Delta has been overlooked in favor of increased exports to the south. An isolated conveyance facility or peripheral canal will do nothing to fix the supply-demand imbalance in the Delta; it merely transfers the shortage of water from one area to another. Historically, water engineers knew that in dry years there was not going to be enough water to support export levels and keep the promise to protect the Delta. An isolated facility will also lead inexorably to the abandonment and destruction of the Delta and its vast array of infrastructure, its urban areas, its agriculture, and its ecosystem.

**Recommendation:**

It is recommended that the Interim Plan provide more guidance and meaning to Policy Objective "b".

**2. Policy Objective "c"; "Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem." (Second Draft, page 11, lines 10-11)**

**Recommendation:**

It is recommended that the Draft Interim Plan include goals and objectives regarding how the Plan will address wetlands coequally existing with agriculture.

**C. Interpretation of the Coequal Goals under the 2009 Delta Reform Act (Second Draft, pages 11-12)**

A central issue to the proper management of the Delta is that the Delta Plan must address how the interpretation of the coequal goals under the Delta Reform Act will coincide with meeting existing water rights and area of origin protections. To reiterate from comments provided on the First Draft Interim Plan (attachment), a vast number of water users within the Delta beneficially use water pursuant to legally-established riparian and/or overlying rights, which are among the most senior of

water rights in the State, and are supposed to be legally protected from diminishment by the Projects' export operations, which exports are based on *junior* appropriative or contractual water rights.

The Watershed Protection and the Delta Protection Acts impose fundamental limitations on the State Water Project and federal Central Valley Project's (CVP) ability to transfer surplus water from the Delta watershed to water-deficient areas to the south and west of the Delta. These protections are in place regardless of the coequal goals of water supply reliability, and environmental protection strategy as put forth by the Delta Vision, and now the Council's planning efforts. These acts contain the historic protections and assurances, including the Delta "common pool doctrine". When the State and federal Projects were initially authorized, the Legislature promised these legislatively protected water users ***"that the Projects will indeed be limited to the transfer of water that is truly surplus to their needs."***

Situated within the Delta watershed, and with a substantial portion of lands within the boundaries of the "legal Delta", San Joaquin County relies on the proper interpretation of these Acts and other protections as of paramount importance to all in-Delta water users, both human and environmental, that depend on water from the Delta watershed.

Additionally, the conflict in the coequality of goals hinges on the fact that this reality of equality does not exist. In fact, reference is given to a letter dated 18 August 2009 in which Antonio Rossman, Lecturer of Water Resources Law, (Boalt Hall), University of California, Berkeley who wrote in regard to then SB1, ***"the bill seeks to maintain the Blue Ribbon Task Force policy of pursuing environmental protection and supply reliability as co-equal goals. Conforming that aspiration to both legal and ecological mandates requires refinement of the Blue Ribbon policy. The California Supreme Court's latest definition of the State's Bay-Delta responsibilities clearly provides that water exports from the Bay-Delta ultimately must be subordinated to environmental considerations (In re Bay-Delta Programmatic EIR Coordinated Proceedings (2008) 43 Cal.4<sup>th</sup> 1143, 1168 (emphasis added))."*** Mr. Rossman continued, ***"Stated differently, the goal of securing a reliable supply must in the end be realized by meeting the paramount needs of the environment."***

#### **Recommendation:**

It is recommended that in the development of plans centered on the coequal goals, the Council provide additional guidance on how the Interim Plan will address this yet unresolved conflict of coequal goals, and also how the plan will abide by established water rights and other area of origin protection laws designed to protect the Delta.

#### **D. Water Code Section 85021(Second Draft, page 11)**

Water Code (WC) Section 85021, setting forth the State policy on reducing reliance on water exports from the Delta, is not given the same importance as other goals, objectives, and policies noted in the Draft Interim Plan. WC 85021 states that ***"The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water***

*technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.”*

**Recommendation:**

It is recommended that WC Section 85021 state policy on reducing reliance on water exports from the Delta be specifically listed as a goal and objective in the Draft Plan.

**E. Discharge of Existing Law should be a Required Action under the Interim Delta Plan (*Second Draft*)**

The enforcement of existing laws and quality standards is a short-term action that can be implemented immediately under the Interim Delta Plan. Through the Fish and Game Code, California WC and other laws and decisions, both the California Department of Fish and Game and the State Board have existing enforcement authorities to address various code and standard violations. For example, under Decision D-1641, the responsibility to meet the Delta salinity objectives is summarized as follows:

*“Salinity problems in the southern Delta result from low flows in the San Joaquin River and discharges of saline drainage water to the river. The actions of the CVP are the principal causes of the salinity concentrations exceeding the objectives at Vernalis.”* D-1641 p. 89

D-1641 states that the circulation problems in the Delta are caused by “...*export pumping by the SWP and CVP and in-Delta diversions in the southern Delta [which] cause null zones, areas with little or no circulation.*” Although the State Water Resources Control Board (SWRCB) found that in-Delta users contribute in part to the southern Delta salinity, based on substantial evidence it was reasonable to place the entire burden and obligation to meet the southern Delta salinity objectives on California Department of Water Resources (DWR) and US Bureau of Reclamation (USBR).

Thus, since 2000, it was made quite clear by the SWRCB that more needs to be done by DWR and USBR to address the salinity problems in the southern Delta as D-1641 imposes.

**Recommendation:**

It is recommended that the Interim Delta Plan and future planning activities of the DSC should contain measures that require compliance with existing state and Federal laws that protect the Delta.

**F. Secondary Zone of the Delta**

**Recommendation:**

It is recommended that Projects in the secondary zone should not be subject to the same scrutiny as projects in the primary zone. Projects in the secondary zone should be referred to the DSC for review and comment but should not require findings of consistency.

**G. Decision Processes (*Draft Plan, page 22, lines 9-11*)**

The principles and procedures for decision making include #2 - *“robust procedures to ensure transparency and adequate opportunities for interested parties and the public to participate in decision making, including availability of information related to a decision well before the meeting at which it is considered.”* The Plan does not include “robust procedures” for public involvement.

**Recommendation:**

It is recommended that the Interim Plan provide principles and procedures for public involvement in the decision making process. Several pages in the Draft Plan are dedicated to process for “engaging and establishing working relationships with agencies”. However, the Plan is virtually silent on engaging the public. The Draft Plan provides the impression that the future of the Delta will be developed without regard for local input and involvement, which is exactly what local agriculture, government, and Delta citizens want to avoid. It is critical that there be strong public participation in the Plan’s development.

**H. Processing Procedure (*Draft Plan, Appendix I, 3. Delta Stewardship Council Administrative Procedures Governing Appeals-Review of Certifications of Consistency with Delta Plan, Page 5 lines 10-46*)**

The Second Interim Draft contains some onerous and circular processing procedures.

**Recommendation**

While this may be difficult to fix because the legislation that exempts a project unless it has a significant impact on one or both of the coequal goals is already adopted as WC Section 85057.5, the following process is recommended for projects in the primary zone of the Delta:

If an application is a project under California Environmental Quality Act (CEQA) the Agency would refer the Project to the DSC. Within 30 days, the DSC would notify the Agency if the project is a covered action. If it is, the Agency posts a draft certification of consistency with the Plan. Thirty days later, the Agency would send to the DSC a “written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan” (WC Section 85225). The detailed findings are based on a list provided by the DSC (similar to an initial study). Thirty days later, the DSC makes its determination. If the DSC determines that the action is inconsistent with the Plan then the applicant may appeal to the DSC. If upon appeal the DSC changes its determination to consistency, then the Agency waits 30 days for a second appeal period to end. If the certification is not appealed, then the Agency can approve the project. Any additional postings, other than the NOD would be done by the DSC, not the Agency. Under this scenario, no time is wasted if the DSC determines that the project is not covered. If the project is covered by the Plan, it will still take about five months to process, if the determination is appealed.

**I. Analytical Tool for Council Action under the Sacramento-San Joaquin Delta Reform Act of 2009, (Draft Plan, page 27, lines 10-16)**

**Recommendations:**

1. Add “water quality” as a tool. The purpose for “fixing” the Delta is to improve water quality, as stated in Policy Objective “e” (Draft Plan, page 11, lines 14-15) “improve water quality to protect human health and the environment consistent with achieving water quality objective in the Delta.”

2. Include an “Economic Development Plan” as a tool. This is consistent with the Policy Objective “b” (Draft Plan, Page 11, lines 8-9) of “Protect and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place.” The Plan deals with improving the ecosystem greatly. What about the people living and working in the Delta? Shouldn’t the plan also deal with their well-being?

3. (Draft Plan, Page 29, lines 1-12) Change the tool “Delta ecosystem restoration plan” to “Delta ecosystem restoration and management plan”. If estuaries, wildlife habitat, and wetlands are going to be artificially developed, then they need to be managed for the life of the project (perpetuity?). The plan should not only identify the process and cost for ecosystem development but should also identify the process and cost of the ecosystem’s management into perpetuity. Management is important to ensure that the ecosystem projects serve their intended purposes and do not adversely impact neighboring lands.

**J. Sources (Draft Plan, page 38)**

Agriculture is the primary land use and economic force in the Delta. Delta agriculture is of chief importance locally, statewide, and nationally.

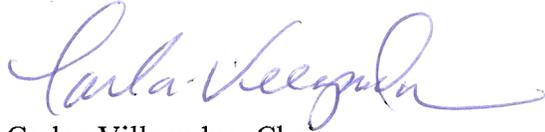
**Recommendation:**

It is recommended that the “Department of Conservation’s Farmland Mapping and Monitoring Program” be included and referenced in the Plan.

The San Joaquin County Board of Supervisors urges the DSC to take these comments, and the San Joaquin County Flood Control and Water Conservation District’s comments to the first draft, (attached) into consideration as the Delta planning process moves forward. It is further recommended that the Council works collaboratively with local government and land owners as the Interim Plan is developed.

Thank you for your attention to this critical matter for San Joaquin County. We look forward to working with you, and submitting more specific comments to the DSC in the future. If you have any questions regarding this matter, please contact Tom Flinn, Public Works Director at (209) 468-3100.

Sincerely,



Carlos Villapudua, Chairman  
Board of Supervisors  
San Joaquin County

Attachment

CV.ER

- c: San Joaquin County State Delegation
  - Paul Yoder, State Advocate
  - Karen Lange, State Advocate
  - Delta Counties Coalition
  - Manuel Lopez, SJC County Administrator
  - David Wooten, SJC County Counsel
  - Tom Flinn, SJC Public Works Department
  - Kerry Sullivan, SJC Community Development Department
  - Scott Hudson, SJC Agricultural Commissioner
  - Ron Baldwin, SJC Office of Emergency Services

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SAN JOAQUIN COUNTY

## FLOOD CONTROL & WATER CONSERVATION DISTRICT

P. O. BOX 1810

1810 EAST HAZELTON AVENUE  
STOCKTON, CALIFORNIA 95201  
TELEPHONE (209) 468-3000  
FAX NO. (209) 468-2999

(ATTACHMENT- FIRST DRAFT)

THOMAS R. FLINN  
DIRECTOR OF PUBLIC WORKS  
FLOOD CONTROL ENGINEER

Sent via Internet Electronic Mail

July 2, 2010

Mr. Joe Grindstaff, Executive Officer  
Delta Stewardship Council  
650 Capitol Avenue, 5th Floor  
Sacramento, California 95814

SUBJECT: COMMENTS ON THE DELTA STEWARDSHIP COUNCIL INTERIM DELTA PLAN

Dear Mr. Grindstaff and Honorable Council Members:

With nearly two-thirds of the Delta located within San Joaquin County (County), we are very concerned about the protection of water quantity and quality available within the Delta, and with the potentially significant negative effects that additional planning processes may have, as evidenced by the Delta Visioning and continuing Bay Delta Conservation Plan (BDCP) process, on the County's communities, land use, flood protection, infrastructure, agriculture and business economy, industry, recreation, wildlife and our way of life.

Please find the following general comments submitted by the San Joaquin County Flood Control and Water Conservation District regarding the Delta Stewardship Council's (Council) development of its Interim Plan and future planning activities.

### **Consider Regional Self-Sufficiency, Enhanced Through-Delta and other Near-term Actions**

The County supports the "Better Way" concepts of regional self-sufficiency, enhanced Through-Delta and other near-term actions to develop a truly sustainable Delta that provides water quantity and quality for all beneficial needs, strengthened levees and flood control structures, improved fisheries and wildlife habitat and the protection of transportation corridors and other vital infrastructure in the Delta.

The County recommends that the Council should evaluate the potential effectiveness of other short-term and interim alternatives that may benefit both the Delta and those throughout the State that are now dependent on the Delta as a water source including:

**Regional Self-Sufficiency Concept** - Reactivates historical floodplains and basins to lessen flood peaks and enhance wildlife habitat; reoperates upstream reservoirs to increase flood control and water storage operations; replenishes depleted groundwater basins as proposed by San Joaquin County's MORE WATER Project.

**Delta Corridors Proposal** - An enhanced Through-Delta conveyance concept that would reconnect the San Joaquin River to the Delta by installing 12 flood gates, barriers, fish screens and/or pumping facilities in the Delta to help avoid the mix of saline waters and endangered fish species from the San Joaquin River with freshwater sources in the Delta.

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DELTA STEWARDSHIP COUNCIL  
INTERIM DELTA PLAN

**South Delta Recirculation** - South Delta recirculation concepts to enhance water quality, protect fisheries, and allow water exports. Under consideration, South Delta Water Agency proposes releasing freshwater sources from the Delta Mendota Canal to the San Joaquin River to combat salinity and reduce reliance on New Melones Reservoir flows.

**South Delta Bypass** - A South Delta flood bypass and habitat restoration area in the vicinity of Paradise Cut could ease flood pressures in the lower San Joaquin River that threaten the residential areas of Lathrop, Manteca, and Stockton.

#### **Abide By Existing Water Rights Law**

A vast number of water users within the Delta beneficially use water pursuant to riparian and/or overlying rights, which are among the most senior of water rights in the State, and are duly protected from the State Water Project and federal Central Valley Projects' (Projects) export operations which are based on *junior* appropriative water rights. In the development of a Delta Plan centered on the concept of coequal goals, the Council must also abide by established laws designed to protect the Delta and area of origin protections.

The Watershed Protection and the Delta Protection Acts impose fundamental limitations on the Project's ability to transfer surplus water from the Delta watershed to water-deficient areas to the south and west of the Delta. These protections are in place regardless of the coequal goals of water supply reliability and environmental protection strategy as put forth by the Delta Vision and now the Council's planning efforts. These acts contain the historic protections and assurances including the Delta "common pool doctrine", which the Legislature afforded such water users when the State and Federal Projects were initially authorized, "that the Projects will indeed be limited to the transfer of water that is truly surplus to their needs."

Situated within the Delta watershed, and with a substantial portion of lands within the boundaries of the "legal Delta", San Joaquin County relies on the proper interpretation of these acts and other protections as of paramount importance to all in-Delta water users, both human and environmental, that depend on water from the Delta watershed.

Additionally, planning to meet these coequal goals of the Delta Plan should not consist of burdening the local economies in the Delta by:

- Converting prime agricultural farmland in the Delta into habitat mitigation for terrestrial and aquatic species caused by Central Valley Projects (CVP) and State Water Project (SWP) operations.
- Flooding of prime agricultural farmland in the Delta due to seepage impacts to adjacent islands.
- Publically acquire private property in the Delta.
- Create access points to the Delta without adequate funding for additional law enforcement and protections for local landowners.

#### **Recognize Water Quality Standards**

The San Joaquin County Board of Supervisors has taken strong positions regarding water quality in the Delta because the United States Bureau of Reclamation, and the California Department of Water Resources (DWR), are obligated by State Law under their water right permit terms to

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operate the CVP and SWP in a manner to meet the salinity standards at Vernalis, on the Lower San Joaquin River, and in all locations within the Delta.

Unfortunately, the CVP and SWP have been operated in violation of their permit terms. The Council in its formation of the Delta Plan must obligate the United States Bureau of Reclamation and DWR to take corrective actions to meet the salinity standards in the Delta. Water quality objectives exist to protect all beneficial uses of water. In the Sacramento-San Joaquin River Delta, water quality objectives have been set to protect drinking water supplies, agriculture, fish and wildlife. Recreation in the Delta is also a major attraction to County taxpayers and visitors. As discussed, over the past two years, the salinity objectives set forth by the State Water Resources Control Board have been regularly exceeded in the South Delta.

### **Embrace Flood Protection and Levee Maintenance Needs**

The Council should not stand in the way of local Reclamation Districts as they put Proposition 1E funds towards the use taxpayers intended they be used. The fortifying of Delta levees should be expedited without further complication. The notion of incorporating habitat improvements to levee projects is noble, but a moot point if levees cannot attain and maintain the PL84-99 Levee standard. Without the PL84-99 designation, the loss of Federal assistance should a levee failure occur would have effects not only locally, but also for those who rely on Delta exports and those who rely on levees to protect key infrastructure such as aqueducts, highways, railroads, natural gas storage and lines, and power lines.

### **Rely on Sound Scientific Peer-Reviewed Process**

The development of additional plans for the Delta are moving ahead at a remarkable pace given the magnitude of the issues involved and the scale of the changes under consideration. Yet rather than ensuring the planning effort proceeds in a cautionary manner that emphasizes sound science, the recent legislation simply cedes all control over the process to interests that—aside from not sufficiently representing the Delta Counties and our constituents—have no direct responsibility for ensuring that sound science is integral to the end result. Accordingly, Council must ensure that it takes all steps possible to foster the application of sound science for the benefit of the Sacramento-San Joaquin River Delta and estuary.

While some scientific work and findings have resulted through CALFED and other processes, fundamental questions remain unanswered. This level of uncertainty makes it difficult to develop solid policy and viable implementation measures necessary to address the problems we face in restoring the Delta. For example, we do not yet know how much water a healthy Delta needs in any given season of any given water year. This is a fundamental question that must be answered before drafting or adopting additional plans.

The State Water Resources Control Board flow criteria hearing will result in the State Water Resources Control Board giving "only guidance" to the Bay Delta Conservation Plan process and not Delta out-flow standards. Further, the opinions and experience of the local geotechnical engineers who manage the Delta levees have been ignored when forecasting the needs of the Delta levee system. Fundamental scientific questions need to be answered while remaining out of the political debate. The use of the Delta Risk Management Strategy findings and recommendations for any decision making process is suspect because the County believes that

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the Delta Risk Management Strategy contains significant technical flaws and is based upon errant assumptions.

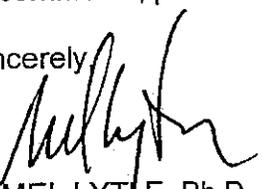
**Include a Fair, Balanced and Transparent Stakeholder Process**

The Council is commended on its request for comments and suggestions on current and upcoming planning activities. As these activities move forward, the Council must take every action to include a fair and transparent stakeholder process that includes individual property owners and local agencies that are affected most by the Council's recommendations. A collaborative timely approach that allows sufficient time for local agencies to interact with the Council, meets mutual goals and addresses specific concerns of property owners in the Delta as well as local governments that potentially have the most to lose in this process will be most effective. The County suggests that the Council work directly with all Counties, Cities, Reclamation Districts and other local agencies that are located in the Delta by encouraging an open on-going dialogue.

The San Joaquin County Flood Control and Water Conservation District urges the Council to take these comments into consideration as the Delta planning process moves forward and recommends that the Council works collaboratively with local land owners and government agencies as the Interim Plan is developed.

We look forward to working with and submitting additional more specific comments to the Stewardship Council in the future on this important effort. Should you have further questions or comments, please feel free to contact me at (209) 468-3089.

Sincerely



C. MEL LYTLE, Ph.D.  
Water Resources Coordinator

CML:LC:mk  
WR-10G004-M1

c: T.R. Flinn, Director of Public Works  
Thomas M. Gau, Chief Deputy Director