



May 25, 2022

Via email

Steve Brandt, Chair
Jay Lund, Past Chair
Lisa Wainger, Chair Elect
Delta Independent Science Board
715 P Street, 15-300
Sacramento, CA 95814

Re: Major California Senate proposal involving the Delta Independent Science Board and unresolved governance issues

Dear Chair Brandt, Past Chair Lund, and Chair Elect Wainger

I wanted to thank you again for your leadership of the Delta Independent Science Board during this critical and eventful period, and for the extraordinary good humor, patience, and dedication that you have shown. However, there is a major new Senate proposal which involves the Delta Independent Science Board, and it brings up some unresolved issues regarding the exercise of your fiduciary duties as elected leaders of a standing board of the state of California.

As you know, the California Senate proposed the following on May 10, 2022 in the Senate's Climate Budget:

https://sbud.senate.ca.gov/sites/sbud.senate.ca.gov/files/Agenda_Sub_2_May_10_Final.pdf

\$100 million for the Sacramento-San Joaquin River Delta, including: Funding for voluntary projects that create wetland habitat and improve flood protection. This program shall be designed to provide multiple benefits for ecosystem restoration, including refuge water supplies and flow enhancement actions beyond those included in Phase 1 of the Bay-Delta Water Quality Control Plan Update. The program will use the Delta Independent Science Board to provide monitoring and oversight.

\$100 million to improve water management science and agency coordination, including:

- Funding to improve scientific evaluation and information sharing between SWRCB, DFW, the California Water Commission, the Delta Independent Science Board, and the Department of Water Resources (DWR).
- Funding to SWRCB, DFW, and WCB for program implementation, and to establish a statewide environmental water master program.

As I informed you previously, we looked in the proposed FY 2022-23 state budget but did not see additional positions for the Delta Stewardship Council (which would mean no additional approved staff support for the Delta ISB.)

I am concerned that the Delta ISB members were not briefed on this proposal at the May Delta ISB meeting. In response to our inquiry, the Delta Stewardship Council Executive Director explained:

As you know each year there are several different Delta related proposals, like what the Senate rolled out on May 10, and most die or morph quite a bit from their initial content and topic, and so we have to be judicious in how we spend our time on high level initial proposals that are quite likely to change or not move forward altogether.

You are right that if large sums of one-time funding were to be assigned to the Delta ISB or the DSP, we'd absolutely need more staff to handle the additional workload. Staffing and resource conversations for the ISB have typically been led by the ISB Chairship, working with DSC leadership, and of course all requests for additional resources are subject to various approvals through the process established by the Department of Finance. etc.

We are concerned that not only is the Delta Stewardship Council apparently not engaging in early discussions with legislative staff on this major proposal, but there also appear to be no channels for the Delta ISB leadership to do so. It is the Delta ISB members who have both a statutory and fiduciary duty to the Delta ISB, and the knowledge and expertise on how science boards can best do oversight. We are also concerned that while the Delta ISB leadership is responsible for requesting additional staffing, this has not been adequately supported in the past.

To facilitate constructive resolution of these issues, I therefore wanted to respectfully ask the Delta ISB leadership for a response to the following questions.

1. Has the Delta Stewardship Council provided a designated liaison with the legislature for discussion of legislative proposals affecting the Delta Independent Science Board? If so, who?
2. In March of 2021, my attorney, Gwynne Pratt, pointed out that the board members are officers of the state:

When the Delta Stewardship Council appointed the Delta Independent Science Board members, they became officers of the state, and were given both the right and the duty to carry out the statutory mandate for their office. (Govt Code § 1001, Wat Code § 85280.)

... It is the DISB members, as the public office holders, who carry out the duties of their office. The DISB Operating Guidelines are clear that “[a]t all times, the Delta ISB will exercise its independent judgment.” (DISB Operating Guidelines, p. 2.)

Q: Did you receive any information from the Delta Stewardship Council Chair or staff which contradicted this fundamental statement? If so, from who?

3. In March 2020, the Delta Stewardship Council HR staff began discussion of conversion of the Delta ISB members to employees of the Delta Stewardship Council (see appendix.) However, the first public announcement by the Delta ISB Chair of the change to per diem appointments appears to have been in October 2020:

I did receive an update yesterday and I guess the good news is that there has been formal approval I believe at the Governor's level of the per diem appointments for board members so that was a significant step forward.

We do not yet know, and it has not yet been decided as to what that per diem would entail and when it would exactly be implemented there are some further steps and including making actual appointments to those per diem state appointments.

It's not expected to occur before our next meeting in November, but the actual date is hopefully shortly thereafter but uncertain so in the meantime we were gonna operate as we are under completely volunteer levels.

Q: Was October 2020 the first time that the Delta ISB leadership was notified of the conversion to employee status? If not, when was the leadership notified?

4. In December 2020, the Delta ISB Chair sent a request to the Delta Stewardship Council for additional positions to support the Delta ISB.

Q: Was this the first time that the Delta ISB leadership was notified of the major reduction in compensation and the resulting need for additional staffing?

5. In March 2021, the Delta ISB Chair reported that he asked that short-term contracts with former members so that the Water Supply Reliability and Monitoring Enterprise reviews can be completed, and that the request was denied. Edmund Yu stated that the DSC could not execute short-term contracts with former Delta ISB members. Several Delta ISB members requested that the Delta Stewardship Council exercise some creativity in issuing contracts.

Q: Was the issue of the Delta Independent Science Board getting support from scientists under contract ever resolved? The Delta Science Program did renew short term contracts with independent scientist for review of the Mercury Control Program for FY 2020-21.

Thank you in advance for any answers you can provide to these important questions, and please forgive my directness in asking for answers. To avoid future problems, I think it is important to discuss these issues openly and publicly.



Deirdre Des Jardins, Director
California Water Research
(831) 566-6320

cc:

Delta Independent Science Board members

Delta Lead Scientist Laurel Larsen

Delta Stewardship Council Vice Chair Virginia Madueno

Delta Stewardship Council Executive Officer Jessica Pearson

Delta Stewardship Council Chief Deputy Executive Officer Ryan Stanbra

Delta Stewardship Council Executive Officer for Science Louise Conrad

Department of Finance Budget Analyst Brian Fuller

Secretary of Natural Resources Wade Crowfoot

Appendix

Public Records Act request correspondence with the Department of Finance

From: Wray, Mary@DeltaCouncil [<mailto:mary.wray@deltacouncil.ca.gov>]

Sent: Tuesday, March 17, 2020 6:07 PM

To: Fuller, Brian <Brian.Fuller@dof.ca.gov>

Subject: RE: March Update

Hi Brian,

Thanks so much for the heads up.

I will give you a call to discuss our issues relative to AB5 and Independent Science Board as well as the Architectural Revolving Fund.

What time would work best for you?

Thanks!

On Apr 26, 2020, at 11:32 AM, Aguilar, Sergio <Sergio.Aguilar@dof.ca.gov> wrote:

No concerns from our end. Once we sign it then DGS takes the process over so just make sure you let them know not to move forward with the one we signed. Once you are ready to submit a new one if something changes just let us know and we can look at it.

Thank you,

Sergio Aguilar, MPPA

Principal Program Budget Analyst

Ext. 2243

(916) 754-4779

From: Wray, Mary@DeltaCouncil [<mailto:mary.wray@deltacouncil.ca.gov>]

Sent: Friday, April 24, 2020 1:39 PM

To: Fuller, Brian <Brian.Fuller@dof.ca.gov>; Aguilar, Sergio <Sergio.Aguilar@dof.ca.gov>

Subject: DSC Form 10

Hi guys!

Can you put a hold on the Form9/10 and 22 for us? We have a few things that are influencing this request.

- 1.) As you know, we are in discussion with CalHR and the Governor's office about the status of the ISB members and the decision to make them employees. This would impact our budget going forward.
- 2.) Teleworking has changed the way we think about work and how we are rethinking how we might configure our space to realize some savings. We are going to meet with DGS space planners next week, so I'm thinking we should revisit that after further discussion.

Hope you guys are staying well, I know you're staying busy!

Mary Wray
Delta Stewardship Council
Deputy Executive Officer, Administration
916-445-5325