



December 7, 2022

Via email

Virginia Madueno, Chair, Delta Stewardship Council
Jorge Aguilar, Chief Counsel, Delta Stewardship Council
715 P Street, 15-300
Sacramento, CA 95814

Dear Chair Madueno and Chief Counsel Aguilar,

This letter is regarding the Delta Stewardship Council's support of the Delta Independent Science Board (Delta ISB). As you know, the Delta ISB is a panel of nationally and internationally prominent scientists with appropriate expertise to evaluate the broad range of scientific programs that support adaptive management of the Delta.

While many of the scientists on the Board are familiar with the requirements of the National Environmental Policy Act (NEPA) and some with the California Environmental Quality Act (CEQA), the Delta Reform Act of 2009 is unique to California, and its requirements are independent of these statutes.

The Delta ISB has done a heroic job of reviewing the Delta Conveyance Project Draft Environmental Impact Report (DEIR); however, their draft review does not mention the Delta Plan requirements for Best Available Science or Adaptive Management. The Delta Stewardship Council's scoping comments on the Delta Conveyance Project DEIR were extremely clear on these requirements (excerpts attached.)

This letter is to respectfully ask, in the months of briefings of Delta ISB by state agencies, why were they never briefed by the Delta Stewardship Council staff or attorneys on these requirements of the Delta Plan and how they apply to the Delta Conveyance Project? Aren't these requirements of the Delta Plan foundational to the oversight by the Delta ISB?

Sincerely,

A handwritten signature in black ink, appearing to read "D. Des Jardins", with a stylized flourish at the end.

Deirdre Des Jardins, Director
California Water Research
ddj@cah2oresearch.com

cc: Dr. Lisa Wainger, Chair, Delta Independent Science Board

Best Available Science

Delta Plan Policy **G P1, subsection (b)(3)** (Cal. Code Regs., tit. 23, § 5002, subd. (b)(3)) states that covered actions must document use of best available science as relevant to the purpose and nature of a project. The regulatory definition of "best available science" is provided in Appendix 1A of the Delta Plan (<https://www.deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>). Best available science is defined in the Delta Plan, Appendix 1A. Six criteria are included in Appendix 1A: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review. (Cal. Code Regs., tit. 23, § 5001, subd. (f).) This policy requires that the lead agency clearly document and communicate the processes and information used for analyzing project alternatives, impacts, and mitigation measures of proposed projects, in order to foster improved understanding and decision making.

As it develops the EIR, DWR should identify and document use of best available science when analyzing and assessing impacts, including but not limited to the following areas:

- Documentation of consideration of best available science in analyzing the selected project alternatives.
- Best available science on climate change, including sea-level rise projections appropriate to the type of project and planning horizon selected.
- Consideration of best available science related to invasive species and water quality issues such as salinity, nutrients, harmful algal blooms, and contaminants.
- If a range of uncertainty is associated with the scientific data or information used to support design decisions or environmental analysis, DWR should document or communicate the uncertainty as required by the best available science Transparency and Openness criterion.

Adaptive Management

Delta Plan Policy **G P1, subsection (b)(4)** (Cal. Code Regs., § 5002, subd. (b)(4)) requires that ecosystem restoration and water management covered actions include adequate provisions, appropriate to the scope of the action, to assure continued implementation of adaptive management. This requirement is satisfied through: a) the development of an adaptive management plan that is consistent with the framework described in Appendix 1B of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>), and b) documentation of adequate resources to implement the proposed adaptive management plan.

Considering the water management components of the Project, an adaptive management plan will be required that addresses Project construction activities, implementation, and ongoing operations. Ecosystem restoration components of the Project would also require DWR to prepare an adaptive management plan