

**COALITION OF ENVIRONMENTAL, ENVIRONMENTAL JUSTICE
AND FISHING ORGANIZATIONS**

To: Joe Grindstaff, Executive Officer
Delta Stewardship Council

From: Coalition of Environmental, Environmental Justice and Fishing Organizations

Subject: Comments on the Third Staff Draft of the Delta Plan

April 28, 2011

Our coalition is pleased to provide our comments to you as you continue the development of the Delta Plan, and we look forward to your continuing development of the Plan. We are impressed with your work process and particularly your openness and transparency which are setting a high standard for public agencies.

1. The new format is a significant improvement. It does a much better job laying out the background, what needs to be done and why, and begins to address the key issue of financing. However some sections still need significant editing if they are to communicate effectively to the public and decision makers. For instance much of Chapter 5 reads more like a master's thesis than a restoration plan. As just one example, see these two sentences from page 62, lines 44 to 47:

“The emphasis is on identifying scales that support relationships between spatial heterogeneity and the life history of native species. For example, in the Delta, the characteristic length of the tidal excursion is a spatial scale and pathway that ties together different habitat types within one-half of a tidal cycle.”

2. The draft gives needed attention to the requirement for Delta Instream Flow Criteria and the Setting of Flows. As the draft correctly points out, any action that potentially increases the amount of water diverted from the Delta is vulnerable to challenge over the question of whether there are sufficient flows to protect and restore the environment (draft at page 49, lines 33 to 35).

To be meaningful the draft's discussion of the need for flow standards should be followed by a policy at least as effective as options A, B and C on page 50, lines 21 to 29:

“A. The Council could use the flow criteria identified by the State Water Resources Control Board from its report on the Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem (2010) to determine consistency of covered actions with the Delta Plan.

B. Determine that a covered action that would increase the capacity of any water system to store, divert, move, or export water from the Delta and/or the Delta Watershed would not be consistent with the Delta Plan until the revised flow objectives are implemented.

C. We recommend that the Board cease issuing water rights permits in the Delta and the Delta watershed (or, if the absence of flow criteria is specific to one or more of the major tributaries, then the constraint could be focused to the impacted areas)."

In addition the Delta Plan should explicitly state a finding and recommendation that providing adequate Delta inflows and outflows is not just the responsibility of those who divert directly from the Delta. It also is a responsibility of those who divert water from the Delta watershed before it gets to the legal Delta.

3. The third draft still lacks any definition of "water supply reliability." That is problematic for several reasons discernable from other sections of the draft. For instance it is not possible to implement real adaptive management to achieve the co-equal objectives as described in Chapter 2 (see the step, Establish Goals and Objectives, in Figure 2-1 at page 23) when one of the co-equal objectives is not defined. Also without such a definition it is impossible to establish meaningful performance criteria. It must be clear that a reliable water supply does not necessarily mean more water; it means that you can reliably count on what you are promised in your contract. In order to have a reliable water supply, a necessary ingredient is that the State Water Resources Control Board, which has the fiduciary duty to grant and revoke all water rights permits, both state and federal, must bring existing water rights permits into compliance with reality.
4. The draft recognizes that the Delta Reform Act established a new state policy of reducing reliance on the Delta for future water supplies. However, none of the policies, options or recommendations in Chapter 4 actually require water supply agencies to achieve and document actual or projected reductions in export reliance – let alone establish a specific target for achieving such reductions – but are limited to promoting actions that could reduce reliance. The Council should not assume that actions intended or represented as intending to reduce reliance will actually achieve real reductions, nor should it assume that real reductions will not be offset by increasing demand or capacity. WR P1 should require water suppliers to document actual or projected net reduction in reliance as part of their reporting obligations on total water use. In addition, WR R3 (p. 49) appears to be directly inconsistent with Sec 85021, by allowing water suppliers to increase Delta diversions and demands without regard to the total Delta water budget, i.e., without ensuring that total Delta diversions and demands decrease to an acceptable level.
5. It is well known that both the SWP and CVP have contractual obligations that cannot be met in most years. Under your mandate to achieve water reliability as a part of the coequal goals, it is the responsibility of the Council to attempt to have contracts modified in order to bring balance to what is promised and what can actually be delivered. That would go a long way toward achieving water supply "reliability."

6. To address the legal requirement to achieve the co-equal objective the draft needs a policy, not just recommendations relative to providing safe drinking water to rural communities including many that are disadvantaged communities. This could be accomplished by expanding Water Resources Policy 1 to require Water Sustainability Plans to specifically include plans, programs and funding to provide drinkable water to rural communities including many that are disadvantaged communities.
7. The description of the Adaptive Management Process is missing one Key Step – Deciding (and subsequently Redeciding). The actual step of deciding is not included in Figure 2. The only oblique reference is in the brief paragraph on Effective Governance at the top of page 31 which is too generalized. It glosses over the toughest question of who decides and who can subsequently change decisions.
8. Financing. Chapter 9 is a welcome and necessary initial foray into the critical questions of financing. We look forward to working with you as this Chapter matures. It is clear that unless real and full costs of any new infrastructure such as a peripheral canal or tunnel, and who is responsible to pay for them, is established at the beginning of the process, the Delta Plan will not likely succeed
9. We remain concerned about in-Delta and up-stream interests and the ability of the Council to mandate their involvement in all restoration efforts. Delta Counties and landowners must be full partners in developing and implementing habitat restoration programs so that a desirable mix of aquatic habitat restoration and sustainable agriculture is achieved. The same holds true for out of Delta counties and landowners where restoration is identified as beneficial to recovery.
10. The extremely short turnaround time provided for these important feedback comments precludes our doing a thorough vetting with our 30 organizations, and you can expect to receive additional comment letters from some of our individual organizations. In a separate memo we will also provide recommendations for a change in the process in order to help alleviate this problem, which other organizations must also be experiencing.



David Nesmith, Facilitator
Environmental Water Caucus

Review Comments by the Environmental Coalition
Third Staff Draft, Delta Plan
April 28, 2011

Chapter 1, Geographic Scope and Use of the Delta Plan. Page 13-15.

We support your statement that the “geographic scope of the Delta Plan must include areas that divert water upstream of the Delta and those areas that export water from the Delta.” We fail to see how a Delta Plan can succeed if it does not consider the significant interconnectedness of our engineered water supply system. Geographic areas that supply water and areas that use the same water in a different geographic area have a direct connection with each other and must be considered as a part of the overall plan. We concur that the Delta Reform Act of 2009 provides the authority to cover certain statewide water issues that are vital to sustainable management of the Delta. We do not agree with the ACWA position that would limit both the geographic area and the Council’s authority in the Delta Plan.

Chapter 1, The Delta Plan. Page 9, lines 12 to 16.

“Accordingly, the Delta Stewardship Council has determined that the first step toward achieving the coequal goals is to avoid adverse impacts on the Delta (“covered actions”) or the coequal goals from:

- ◆ *Actions that further erode water supply reliability or water quality;*
- ◆ *Actions that further degrade the Delta ecosystem; or*
- ◆ *Actions that increase risk to people, property, or statewide interests”*

This is an excellent starting point which can be summarized as, “When you are in a hole the first step is to stop digging.”

Chapter 1, Page 10, lines 22 to 25, “Reliability of the State Water Project”

Inclusion of such a chart and accompanying text would only reinforce the false notion that full contract deliveries are a performance measure for water supply reliability. From the inception of the State Water Project and before that the Central Valley Project it was always anticipated that there would be many years when the contracted amounts would not be available. As the draft correctly points out elsewhere, water supply reliability can only be achieved by a mix of strategies that actually reduces reliance on the Delta and brings expectations in line with experience and reality.

Chapter 1, Page 13, line 1, Phasing of the Delta Plan and the First Five Years.

It is good to see acknowledgement of the reality of phasing. However after the call out of the First Five Year period in the title of this section, there is no clear articulation of all the activities the plan would encompass in the first five years. That would be a very helpful addition.

Chapter 2, Science and Adaptive Management for a Changing Delta.

Readers of the Plan would benefit greatly if this read much less like a master's thesis. Also as mentioned above in the general comments, the step of "Deciding (and subsequently "Redeciding") needs to be laid out with specifics.

Chapter 2, An Adaptive Management Framework, Page 22, lines 12 to 23.

This section correctly identifies the steps necessary for an adequate plan: a) define/redefine the problem; b) establish goals and objectives; c) model linkages between objectives and proposed action(s); and d) select action(s): research, pilot, or full-scale (p. 22). Unfortunately, the draft Plan does not take its own advice. The draft appears to suggest that other plans be subject to a consistency determination of meeting these steps while exempting itself from doing so. It consistently confuses the very broad narrative goals of the Delta Reform Act (unfortunately described as objectives in the legislative language) with clear, specific, measurable objectives as used in Chapter 2, and defers the establishment of thresholds for success to the subsequent and derivative step of developing performance metrics. But the Act's language is not sufficient to serve as objectives for purposes of the Delta Plan in determining appropriate policies and regulations, nor does the draft identify how the following steps of adaptive management will be developed within the context of the Plan itself.

Chapter 2, Page 21, line 4.

The Reform Act does not "...seek to provide ..." a strong science foundation. It *requires* a strong science foundation.

Chapter 2, Page 21, line 32.

Decisions are always (not just usually) made without perfect information.

Chapter 3, Governance: Implementation of the Delta Plan.

As stated in the draft, the Delta Plan is a strategic plan to provide guidance and make recommendations. The water code 85020 places some responsibilities on the Council that are state wide and far reaching. It is important for the Council to establish a structure upon which guidance and recommendations can be provided, both for covered and non-covered actions. It is stated that the legislature requires the Council to establish and oversee a committee of agencies responsible for implementing the Delta Plan. Hence, we make the following recommendations relative to this responsibility:

1. Identify what relevant agencies must be included in the "*Governance Committee.*"
2. It is our recommendation that other interest parties be part of the process of decision making within the Governance Committee to broaden the process to include consideration of non-agency issues. Examples would be:
 - Delta Conservancy
 - NGO representatives
 - Commercial/recreational fishing representative
 - In-Delta Community Representatives
 - Science Advisory Board member

3. Develop an organizational chart which will show clearly the structure of the governance process, and identifies what additional advisory boards, committees, and outside inputs will be associated with the “*Governance Committee*.”
4. Develop a clear and concise list of responsibilities for the *Governance Committee*, and make clear the difference in process between covered and non-covered actions. Some areas of possible responsibility are:
 - The guiding principle of any governance committee should be the precautionary principle – First, do no harm. The fragility of the Delta ecosystem is such that it is already operating on the edge of tolerance, even with reduced reliance as mandated by the legislature. Hence, it is inappropriate to do anything that could risk additional stress.
 - General operating criteria for water operations, ensuring that appropriate Delta flows are maintained.
 - Restoration oversight to facilitate and implement restoration projects within the Delta to meet established restoration timing and completion dates.
 - Work with the Science Advisory team to help manage the adaptive management efforts to ensure species recovery of aquatic resources.
 - Coordinate with the Delta Conservancy on efforts with Delta communities, counties and landowners.
 - Establish and manage budgets to secure necessary funding both for the Council and for the other efforts in the Delta Plan.
 - Oversight and recommendations on implementation of state wide water conservation, water use efficiency and reclamation programs, and ensuring that strategic goals are being both established and met.
 - Meet with the SWQCB on important Delta issues – tributary flow criteria, Delta flow criteria, pollution issues in tributaries, illegal diversions, etc.
 - Meet with the Delta Protection Commission on Delta levee repairs and other Delta protection issues, and to ensure that deadlines are being met.
 - Meet with Delta and watershed communities to understand the best interface with them on local issues of concern, and to take actions necessary to ensure actions of the Council are protecting and enhancing the unique cultural, educational and agricultural values of the Delta and its watersheds.
 - Develop specific recommendations for the legislature or other appropriate state agencies for actions to facilitate the Delta Plan to meet its responsibilities of Delta ecosystem protection, restoration and enhancement, as well as water supply reliability.
 - Establish appropriate goals and objectives as well as timelines to achieve Delta restoration and water conservation, reclamation and efficiency strategies.
 - Meet regularly to discuss the obligations of both the SWP and CVP, their oversight responsibilities, and ways to bring contractual obligations more in line with available water.

In addition to the above, there are other areas of concern that must be articulated within the process of governance, and in some cases, the governance structure must be designed to provide protections against outside interference. There must be a level of independence for decision

makers. It must be clear that the science board will have influence on the decision making process, and not be left only as advisors hoping their advice is followed. It is unfortunate, but too many times politics has trumped science in decision making in the Delta, and with water management in particular. In many ways, the success or failure of the Delta Plan may hinge on the ability to design a governance structure that protects decision makers from the impacts of those who have the desire to alter the process based on limited or short term pressures.

Chapter 3. Governance, Consistency Determination. G P1.

The draft distinguishes between policies, which function as requirements for consistency determination under the Plan, and recommendations, which do not. It is not at all clear what the basis for this distinction is. Almost all of the recommendations for actions by other agencies would appear to be essential to helping achieve the Plan's purposes, and the Council is specifically charged with identifying those actions necessary by parties whose actions affect the Delta and successful attainment of the Plan.

Chapter 3, Page 36, line 14.

"This policy is not intended to affect the rights of any owner of property under the Constitution of the State of California and the United States." It seems likely that many of the policies and even implementation of the recommendations in the Delta Plan will affect how rights may be exercised.

Chapter 3, Governance: Implementation of the Delta Plan. Page 35, Covered Actions are a Core Responsibility.

This section clearly calls out the Council's authority for "Covered Actions" as defined in Water Code section 85057.5. We concur with the approach that this responsibility includes an expansive view of the Council's authority, within legal limits and considering the legal responsibilities of the primary responsible state or local agency. We believe that the Council should go further and include implementation actions and enforcement actions which are consistent with the authorities of the primary responsible state agencies. For example, recommendations in the areas of water rights permit approvals, changes to diversion points, operations of storage and conveyance facilities and over-allocation issues, which are the prerogative of the SWRCB, would be appropriate so long as the SWRCB is specified as the primary implementation and enforcement authority for regulations on these subjects.

Chapter 4, Page 50, lines 13 and 14.

"♦ By June 2, 2014, adopt and implement flow objectives for the Delta that are necessary to achieve the coequal goals." Considering that the State has announced that the BDCP application and EIR/EIS will not be completed before 2013 and that it will then be subject to a comprehensive regulatory proceeding at the SWRCB, the policy should state that the flow objectives to be developed by June 2, 2014 are for the existing system of conveyance.

Chapter 4, Page 50, lines 20 to 29.

As discussed in our general recommendations these three items identified as options should all be included as policies. Unfortunately repeated experiences amply demonstrate that the hard work of establish new flow standards will come only if there are significant forcing mechanisms.

Chapter 4, Page 50, lines 37 to 38.

“This issue is being addressed through the Bay Delta Conservation Plan, but improvements in storage and conveyance will be needed while the Bay Delta Conservation Plan is being developed.” With the exception of expansions of Los Vaqueros and San Vicente Reservoirs, we are unaware of any proposals for increased surface water that could be implemented in the time frame BDCP projects for its completion.

Chapter 4, Page 54, lines 16 to 22.

“WR R7 To be consistent with the Delta Plan, water suppliers that deliver water diverted or exported from the Delta or the Delta watershed and that receive a significant percentage of their water supplies from groundwater sources should develop sustainable groundwater management plans that are consistent with both the required and recommended components of local groundwater management plans identified by the California Department of Water Resources (Bulletin 118, Update 2003).” This WR R7 recommendation should be converted into a policy and rolled into WR P1 as an element of their Water Sustainability Plan. In the conversion, one amendment should be made as shown here in underline, *““WR R7 To be consistent with the Delta Plan, water suppliers that receive or deliver water diverted or exported from the Delta or the Delta watershed...”*

Chapter 4, Page 54, lines 22 to 31.

The first part of WR R8 “Local and regional agencies in groundwater basins that have been identified by the Department of Water Resources as being in chronic overdraft should develop a sustainable groundwater management plan, consistent with both the required and recommended components of local groundwater management plans identified by the California Department of Water Resources (Bulletin 118, Update 2003), by January 1, 2015:” This recommendation should be converted into a policy and rolled into WR P1 as an element of their Water Sustainability Plan.

Chapter 4, Pages 54, lines 32 to 39 and Page 55, lines 1 to 9, Performance Measures. The vacuity of this section stems directly from the lack of definition of the co-equal objective of “Water Supply Reliability.” They are poor measures of activity, not performance.

Chapter 5, Restore the Delta Ecosystem.

We were struck by the Palmer, et al 2005 criteria for successful ecosystem restoration, and their first recommendation, “The project should be based on a clear guiding image of the type of dynamic and healthy ecosystem to be achieved.” We agree that knowing where you want to go before you start is critical to the outcome. We feel that the comment on lines 30 and 31 of the restoration section can be the focus of the guiding image for the delta, at least early in the restoration process. “Improved flow regimes, greater habitat diversity, and better water quality are key characteristics for achieving a healthier Delta.” These three areas of focus can be

measured for a baseline, altered in knowable ways, and evaluated following actions. Additionally, if baseline measures are done prior to altering these three variables, we will be able to demonstrate the impacts on ecosystem residents. We recognize that this is a long plan with multiple projects over time, but starting with a focus on these areas is critical to restoring some balance in the system, and should be at or near the top of the list for early actions.

Chapter 5, Flow Regimes.

1. We agree that altered flow regimes have led to degradation of the Delta aquatic ecosystem.
2. We would note that flows, or lack thereof, can contribute to success of invasive species, nutrient composition and water quality. These are not independent of flows, as the state Resources Control Board states.
3. Creating a more natural flow regime in the Delta is critical to improving the Delta ecosystem, but since the Delta is a fully managed aquatic system, it will require a managed approach to establish both needed tributary in-flow and timing, as well as how much of that in-flow must pass through the Delta to San Francisco Bay. We would suggest that this is an ever changing process, determined by aquatic species needs, time of year, as well as water year type, among others.
4. ER P1: WR P4. We would agree totally with the first 2 bullets. Bullet 3 should reference consistency with the current Biological Opinions flow requirements for both Delta Smelt and Salmon/steelhead.
5. We would recommend adding “establish an enforceable mechanism to ensure water exports from the Delta and water transfers are consistent with the flow standards established in WR P4.”

Chapter 5, Improving Habitat

We would recommend that the Council recognize that habitat restoration upstream of the delta is a necessary component for restoration of species dependent on the Delta and its watershed. As such, clear recommendations for habitat restoration upstream should be part of the Delta Plan.

- ER P2 – We have not had time to read these DFG policies through, and will hold comment for the 4th draft.
- ER P3 – same comment as ER P2
- ER P4 – Bullet 2 – we agree that maintaining or expanding large blocks of intact habitat is important, but equally important is to provide for connectivity between these blocks such that species can easily move between these areas without risk.
- ER P5 – We agree.

We ask for upstream recommendations for habitat restoration be made to other agencies that have that ability, as it will bring greater species recovery success and resiliency, and reduce over-all in-Delta recovery needs.

- ER R1 – We agree with this listing of priority locations
- ER R2 – Delta Conservancy – we agree with nearly all of the stated tasks and goals. We would add one additional necessary funding need, and that is maintenance of established restored areas. It may be thought that this is covered in “long-term operation and management “, but experience in other HCP and NCCP efforts has shown that unless

funding for maintenance is established, restored and protected areas that are no longer actively being worked on degrade.

Reducing Threats and Stresses

We agree that invasive and/or non-native species can be a threat and must be addressed appropriately. We also agree that some now established in the system have been here for well over 100 years, and as such, do not pose a threat to survival or recovery of the native species now existing in the Delta ecosystem.

- ER P6 – Appears to be a fair and balanced position.
- ER R3 – We will hold comment until draft 4
- ER R4 – We agree with this recommendation

Bay Delta Conservation Plan

We generally agree with the Council recommendations in the draft. However, more is required than simply including the scientifically based adaptive management program. In addition to this, the key issue of a scientifically based water management and diversion plan should be noted in this section. Restoration and associated adaptive management alone cannot meet the legislative mandate of a restored Delta ecosystem. Appropriate water management, including reduced reliance on the Delta, is a necessary part of the process.

- ER R5 – We agree with this recommendation, but it puts added responsibility on the Council to be prepared to take action on the areas now left to BDCP.

Performance Measures

The listed performance measures are a good start, but more definitive goals and objectives for specific species are needed, as well as specific target dates for Delta inflow and outflow criteria. We feel generally that it will take some time to really develop this area, and it should be done in consultation with the science advisory board, and based on scientifically derived expectations. We do feel that performance measures are critical to meeting the legislative mandates for ecosystem recovery, as well as recovery to self-sustaining populations of aquatic species, both pelagic and anadromous. Hence, we fully support the Council for including this in the Plan, and request the Council to provide a public opportunity to hear from the science team on how performance measures can and should be established for the Plan. This is totally consistent with the opening quote in this section: “The project should be based on a clear guiding image of the type of dynamic and healthy ecosystem to be achieved.”

Chapter 5, Restore the Delta Ecosystem.

Delta Counties and landowners must be full partners in developing and implementing habitat restoration programs so that a desirable mix of aquatic habitat restoration and sustainable agriculture is achieved. The same holds true for out of Delta counties and landowners where restoration is identified as beneficial to recovery. At no point in this Chapter or in Chapter 3 do we see a firm commitment – which is needed – to meaningfully involve Delta residents in the development of the Delta Plan.

We see no conflict with incorporating Delta County personnel and Delta landowners as an integral part of the Delta Plan process with our statements in Chapter 3 which reinforce the expansive view of the Council’s authority.

Chapter 9, Finance Plan Framework to Support Coequal Goals, Page 110, lines 7to 13.

“Urgent expenditures for water reliability and ecosystem protection: Initial steps to protect the existing Delta water export system from flood risks, and needed ecosystem improvements to reduce damage by operations of the existing export pumps in the Delta. Those immediate needs are discussed in the various chapters of the Delta Plan. These recommendations are in addition to other ongoing efforts that should continue to be funded. Examples of these include implementing the Biological Opinions, funding levee subventions, funding science, and many more. The total cost of additional short-term needs is approximately \$XXX million annually for the next 5 years.” Because these are the highest priority and least discretionary costs, they need to be quantified for the next draft.

It is insufficient to address them with general statements such as Page 112, lines 17 to 19: *“FP R5 Appropriate funding should be continuously appropriated in support of the Department of Water Resources’ Delta Levees Subventions and Special Projects, FloodSAFE, and the Central Valley Flood Protection Board.”*

Chapter 9, Finance Plan. Diversion Fees, Page 115, Line 19.

Despite the objections to Diversion Fees, we recommend that the Council continue exploration of a water diversion fee and a Delta export fee by the Council and the State Water Resources Control Board. The top priority of such a diversion and export fee should be to support ecosystem restoration efforts. This system of fees should be founded on the responsibility of all water users under the public trust to contribute to ecosystem restoration. Development of these fees should consider the following:

- Long-term habitat restoration funding required to achieve the co-equal goals.
- An appropriate share of public funding for ecosystem restoration efforts, as well as likely state and federal funding, given the pressures on the state and federal budgets.
- Contributions by water users to other system-wide ecosystem restoration efforts. Site specific, water agency local mitigation costs (e.g. the installation of fish screens) should not be considered for crediting in the development of these user fees.
- These water fees should not be used for the purchase of water to achieve compliance with regulatory requirements.

Chapter 9, Finance Plan. Guiding Principles, Page 108.

We recommend adding the following Principle:

The development of information related to financing (such as the identification of beneficiaries and stressors and detailed financing scenarios) should be undertaken simultaneously with the development of major capital decisions, in order to inform planning efforts. The development of finance plans should not be delayed until the conclusion of capital planning efforts.

Chapter 9, Finance Plan. Near-term Funding Recommendations, Page 113.

Add to FP R10: The primary purpose of a public goods charge should be to fund investments in efficiency, water recycling, groundwater clean-up, stormwater capture, and other tools that can reduce reliance on imported supplies.

Chapter 9. Finance Plan. Public Goods Charges, Pages 117-118.

Add the following comment to the discussion of Public Goods Charges:

A public goods charge could ensure a minimum investment by all urban and agricultural water agencies in water user efficiency and other tools that can reduce reliance on imported water. It could also provide consistent funding over time.

Chapter 9. Finance Plan. Public Goods Charges, Page 118.

Insert at the end of Line 2:

The CPUC's recommended water public goods charge is focused on water efficiency – broadly defined -- including agricultural and urban water use efficiency, water recycling, stormwater capture and groundwater clean-up efforts. We strongly support the language in the draft that would require a volumetric approach to such fees as well as contributions by both agricultural and urban water users.