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Assembly Member Jared Huffman
Chair, Committee on Water, Parks, and Wildlife
State Capitol
P.O. Box 942849
Sacramento, CA
94249-0006

Senator Fran Pavley
Chair, Natural Resources and Water Committee
State Capitol, Room 4035
Sacramento, CA 95814

Dear Assembly Member Huffman and Senator Pavley:

On behalf of Restore the Delta – a coalition of over 3800 Delta residents, business leaders, civic organizations, community groups, faith-based communities, union locals, farmers, fishermen, and environmentalists – we are submitting the following comments regarding bills SB1 and AB1. We are offering our comments in a package as the two proposed pieces of legislation as written must be passed and enacted on simultaneously.

The greatest problem with both SB1 and AB1 is the bills' acceptance of the notion of coequal goals for the Delta, adopted by both Delta Vision and the Bay Delta Conservation Plan. Restore the Delta maintains that this notion for Delta management has always been flawed because it is not possible to guarantee water supplies for other regions and at the same time guarantee water for the Delta ecosystem.

Case in point, during Senator Joseph Simitian's August 18th, 2009 testimony, Senator Simitian described reliable water deliveries as "Whatever your commitment is to water supply, you can count on it being there. That is what reliability means to me." It is exactly this logic that has brought the Delta to the brink of complete ecological collapse. It is public statements such as these that cause members of the Delta community to fear the legislative intent of these bills. Moreover, the various definitions of water reliability as offered up by the members of Senate-Assembly Joint Committee August 18th, 2009 Hearing indicate that the notion of co-equal goals for protecting the Delta and water exports functions more as a type of Rorschach test that ultimately reveals what interested parties want to see as the end result of the legislation in question.

Rather than enforcing existing contracts for water exports as negotiated and signed with the implementation of the Central Valley and State Water Projects, Federal and State operators have consistently managed these projects so as to deliver water at the expense of fisheries and Delta communities by ignoring the Endangered Species Act, water quality codes and laws, and contractual obligations. SB1 and AB1 would codify and legalize this consistent subversion of good laws that if enforced would protect the Delta – all in order to ensure deliverable water supplies from the Delta. Laws that are meant to protect species and to provide beneficial uses of water to millions of Delta residents will be legally subordinated to water exports, remaking the Delta into nothing more than a permanent pool for water exports.

Regarding the creation of a Delta Stewardship Council, we are strongly concerned about the abdication of oversight by the legislature that would result from the adoption of SB1 and AB1. While Restore the Delta has always maintained that the crisis in the Delta is a crisis of poor governance, adding layers of new councils and new bureaucracies, while eliminating the legislature's future role in oversight is certainly not the answer for solving the crisis at hand.

The language in SB1 allows for the Delta Stewardship Council, which would have seven members, four appointed by the Governor, one by the Senate, and one by the Speaker of the Assembly, with one Delta position to be held by the President of the Delta Protection Commission. In AB1, early actions under the Delta Plan Act can proceed with just a quorum of this Delta Stewardship Council. Neither the Council itself, nor a quorum is defined in this bill. One early action of the council would be to create a finance strategy for developing the Delta Plan. Coming up with a strategy is all AB11 says about how the plan will be paid for.

In essence what we see unfolding early on if this legislation is enacted, is the creation of a plan by an undefined quorum of a politicized council that will figure out how to pay for the implementation of said plan. This is not transparent management of the Delta. This is a plan for potentially as few as four people to have control over the state's most vital resource – water – without legislative or voter accountability. This is a plan for potentially as few as four people to decide the fate of a region inhabited by over 500,000 people with an economy estimated to be worth over \$5 billion annually- specifically a fishing, recreation, and farming economy that is tied to Delta water quality and quantity. This is also a potential blank check for those members to spend billions of dollars without oversight while they manage this resource.

As Senator Wolk stated at the August 18, 2009 hearing, we cannot find one example of a local, state and/or federal management area in which local representation is so inadequately represented as it would be in the Delta if these bills were to pass. Moreover, Senator Simitian's comment at the hearing – that Delta locals would have majority control of the conservancy – is at best disingenuous if the Delta Stewardship Council is given charge to ensure that the conservancy plan is compatible with the Delta Management Plan as created by the Council.

In summary, this proposed governance structure is not democratic. Good governance for the Delta would be comprised of equal representation between local interests and state interest in the Delta. Good governance for the Delta would more importantly make sure starting today that

current laws on the books for meeting Delta water quality standards and fish screening would be enforced.

In Part 3, Chapter 2, Section 85319 (SB1), it is written that:

The council will authorize any conveyance facility, after first adopting “instream flow determinations for the Sacramento River and waterways within the Delta that provide the volume, quality, and timing of water required for a healthy Delta ecosystem under different conditions, including seasonal, annual, and interannual bases, and including an assessment of increased spring and fall outflow and increased San Joaquin River inflow.”

If the instream flow determinations show that it is not possible to provide for a healthy Delta ecosystem and still ensure water supply reliability, is there any chance at all that the council would not authorize a conveyance facility? That possibility is not considered in the legislation as written.

The bill requires water exporters to submit to the council contingency plans in case of “Delta water supply curtailments and drought, consistent with the board’s instream flow requirements, and a long-term plan for reducing reliance on those exports.” But if conveyance is constructed, what would be the incentive for reducing reliance? Current public debate indicates that water exporters and their supporters would like to see endangered species protections revoked during dry periods. Where are the assurances and the guarantees that the Delta would have sufficient inflows during drought periods? Such assurances are not in this proposed legislation.

Turning to the description of a Water Master (Section 3, Chapter 3 of SB1), Restore the Delta notes that in every other area of California, where the expertise of a water master is required, the water master is enforcing adjudicated water rights. In order for Delta water exports to be significantly reduced, water rights in the Central Valley need to be adjudicated. This is the only way in which over-subscription of the Sacramento-San Joaquin Valley watershed can be curtailed.

According to this section in the legislation, this board appointee, selected from a list provided by the Delta Stewardship Council, must have knowledge and experience in one or more of these areas: water rights laws or enforcement, water quality laws or enforcement, the SWP or the CVP, state or federal endangered species law or enforcement. Given the composition of the Delta Stewardship Council and the political vulnerability/inability of the State Water Resources Control Board, the appointment doesn’t hold much hope for the Delta.

The Delta Water Master would have statutory enforcement authority to direct daily operations of all surface water diversions in the Delta watershed. S/he would enforce water rights for diversions, exercise the state’s public trust responsibilities, enforce the California Endangered Species Act, make judgments about reasonable use, enforce water quality objectives, and consider petitions for changes in permits or licenses for diversions. Water Master decisions, however, could be appealed to an administrative law judge appointed by the board. Why not

have a judge appointed by some outside, neutral body? Better yet, why not have a panel of three retired judges, who have no personal ties to state water policies, serve as the Water Master Panel?

On the surface, the description and composition of the Delta Independent Science Board (Section 3, Chapter 4 of SB1) seems like an excellent entity. Nevertheless, when we consider that in its annual report to the Delta Stewardship Council the Independent Science Board will be given charge to make scientific recommendations that are relevant to achieving the coequal goals, it is questionable how independent the science will be.

The Delta Independent Science Board shall include in the report scientific and technical findings regarding the management of the Delta and recommended actions of the council, an identification of short-term and long-term matters for research, and a description of the relevance of these matter to achieving the coequal goals.

How can this Independent Science Board be irrelevant if the coequal goals are not negotiable?

Moving to Part 5 of SB1, the chapters on Delta Finance, the unanswerable questions found within the legislation itself are even more numerous and deserving of public scrutiny. Who will pay for the Delta Management Plan and the new conveyance it proposes? How much will it cost? How much of the plan would be paid for by beneficiaries? At what point, would the Delta Stewardship Council be able to issue revenue bonds (section 85407) to “finance a project described in this section”? Which section? Does this mean the Council could issue revenue bonds to pay for water project activities under the State Water Project and the Central Valley Project? And even if water contractors pay for “mitigation to reduce environmental damage caused by water exports to natural resources in the Delta and its tributaries,” how does money mitigate for diverting the Sacramento River and transforming it into a losing stream? It cannot be done.

In conclusion, SB1 defies public interest at a time when the public is most interested in how government is spending their resources.

Returning to AB1, the other half of this troublesome legislative duet, Restore the Delta finds the bill’s redefining of the Delta’s ecological history, communities, and flood protection needs as worrisome as the promotion of new conveyance for the Delta. AB1, in its legislative intent, not only misinterprets the geographical and social history of Delta communities, it also moves to impose an outsiders revisioning on our future.

AB1 includes a detailed discussion of flood control, but mostly for the state and federal water projects and disregards flood protection within the Delta; local flood protection plans may be incorporated, and the plan will “promote” emergency preparedness, appropriate land uses, and strategic levee investments. At the outset, the bill says that landowners are not entitled to state funding to maintain or repair private levees, suggesting an end to the subvention program for

levee maintenance. There appears to be no commitment to protecting the Delta as a common pool, although it is “the hub of the California water system,” as described in the bill itself.

By interpreting nonproject levees as a private system, the bill fails to execute an understanding of the history, and current economic and public benefits derived from the construction and maintenance of nonproject levees, maintained by reclamation districts, which are public entities. There is a contractual history of Delta grants given to landowners for reclamation in order to create three public benefits: commerce, navigation, and fisheries. AB1 if implemented could have a detrimental effect on all three public benefits.

What is even more disturbing is a lack of knowledge regarding the need for consistent and planned levee maintenance in the Delta. Private levees must be maintained in order to keep physical stress off of the state and federal levees that protect hundreds of thousands of urban residents in the Delta. By legislating the elimination of funding for nonproject levee maintenance, this legislature would be helping to set the Delta up for failure. While the forces of nature will reshape the geography of the Delta over time, letting go of scheduled maintenance, and allowing the Delta to simply reshape itself without planned management, would lead to the endangerment of human life, the complete destruction of an important regional economy, and would contribute to even further ecological deterioration of Delta fisheries.

Restore the Delta also has grave reservations over the implementation of the Delta Management Plan as it relates to the Bay Delta Conservation Plan. It appears that eventually the Delta Stewardship Council will take control of the BDCP process, holding a public hearing on the EIR, and incorporating the BDCP into the Delta Plan provided that it is “based on the best available scientific information” about 1) volume, quality, and timing of water for a healthy Delta ecosystem in different seasons; 2) a full range of Delta conveyance alternatives; 3) considerations of lined and unlined canals and pipelines; 4) potential effects of climate change and sea level rise, plus changes in precipitation and runoff patterns; 5) potential impacts on migratory fish and aquatic resources upstream of the Delta; 6) potential impacts on Sacramento River and San Joaquin River flood management; 7) the effect of earthquakes or floods on different conveyance alternatives; and 8) “the probability of achieving current Delta water quality for each of the conveyance alternatives.”

Why would achieving current Delta water quality for each of the conveyance alternatives be a possible goal incorporated into the Delta Management Plan? Is current water quality a goal to strive for? Isn't the idea behind spending billions of dollars for new conveyance and Delta restoration to improve Delta water quality?

Without surprise, in this list of evaluation criteria for the BDCP a no-conveyance alternative has been omitted. If the creation and implementation of the Bay Delta Conservation Plan were based on a full selection of alternatives and possibilities, the people of the Delta would probably have more confidence in the process, despite having been left out of the creation of the BDCP.

However, as exemplified in this legislative proposal -- a single hearing on the Environmental Impact Report of the Bay Delta Conservation Plan, conducted by the politically appointed Delta Stewardship Council, to consider a full range of Delta conveyance alternatives, through a scientific frame that can only examine the coequal goals of water export reliability while protecting the Delta's ecosystem, without adequate Delta representation -- is supposed to suffice for the future of Delta fisheries, Delta communities, and management of California's water system.

As it stands, AB1 and SB1 effectively shut out the people of the Delta -- fishermen, farmers, boaters, business members, wake boarders, levee engineers, concerned citizens, local governments, and environmentalists alike—from having input in the management of what we know best, the Delta.

Sincerely yours,

Barbara Barrigan-Parrilla
Campaign Director
Restore the Delta