



The Honorable Darrell Steinberg
California Capitol, Room 205
Sacramento, CA 95814

The Honorable Karen Bass
California Capitol, Room 219
Sacramento, CA 95814

RE: SB x7 1 & SB x7 4 (Steinberg) and SB x7 2 (Cogdill) - OPPOSED

Dear Senate Pro Tempore Steinberg, Speaker Bass, and Members of the Joint Committee:

The above groups continue to oppose the legislative response to the worsening Delta collapse, SBx7 1. For the record, we do not support the “status quo” – we agree that reform is necessary to improve the Delta estuary.

Our main concerns with the revisions in the 7th Extraordinary Session are:

- **The purported environmental benefits in SB x7 1 and SBx7 4 hinge on unfunded programs and unstaffed planning processes.** There is no identified funding for the Delta Conservancy or the Delta Protection Council. Without identified funding, the restoration projects and consistency processes intended for Delta health will fall behind the construction of facilities in the Delta paid for by beneficiaries. This repeats a cornerstone failure of CalFed. This creates a real risk of the infrastructure and water supply projects proceeding without environmental gains.
- **There is no assurance that a permit for any future Delta facility will accommodate the instream flow needs of aquatic species.** Public trust criteria are not proven tool for ensuring dedicated water for the environment. Experienced water lawyers disagree whether the creation of public trust criteria compel the State Board to base a permit for a future Delta project on the public trust.
- **The bond allows public funds to be spent on required mitigation** or necessary compliance with environmental regulation. Existing law requires beneficiaries to pay for those activities. This is a massive cost shift to taxpayers.
- **The Delta Stewardship Council holds no fee authority to carry out its mandate.** The successful model, used by the Global Warming Protection Act - AB 32, equipped the California Air Resources Board with authority to charge polluters for their share of the cost of administering this legislation.
- **The new incentive based process for groundwater monitoring will not produce an increase in groundwater monitoring and is the wrong approach.** State funding is increasingly unreliable and counties tend not to apply for water grants, unless on behalf of disadvantaged communities, creating a disproportionate impact from this approach. Agencies with the ability to compel well-user participation though fees are better suited to ensure a statewide monitoring program than counties.
- **Groundwater monitoring program is not functional, and has the unintended consequence of limited the ability of disadvantaged communities to resolve their water and wastewater problems.** Counties often administer state-funded infrastructure projects for disadvantaged communities. These projects are imperiled by the language that

ties county compliance to funding eligibility. DWR is the appropriate agency to administer this program, and agencies with the ability to compel well-user participation through fees are better suited to ensure a statewide monitoring program than counties

- **The Delta Plan is not required to reduce state dependence on the Delta.** The objectives for the Delta Plan do not include reducing state reliance on Delta exports. SB x7 1 only states that it's an **intent** of the state to reduce dependency.
- **The bill lacks sufficient oversight of the BDCP.** The Council lacks the authority to ensure the project does not cause greater harm to the fragile Delta ecosystem.
- **One-third (\$3 billion) of the SB 7x 2 funds above-ground storage, which is the least efficient way to increase water supplies.** The Department of Water Resources has proven the
- **Less than 3% of the funds in the bond would be dedicated to disadvantaged communities most in need of safe drinking water.**
- **The proposed water conservation package lacks the enforceable goals needed to achieve 20% conservation by 2020.** Exemptions for industrial uses and the lack of any conservation goals for agriculture mean that real actions to reduce water diversions from the Delta are missing from this package.

These comments are premised on the facts that California's water supply is already eight times over allocated and that regions throughout state are striving to improve their own regional self sufficiency by focusing on 21st century solutions: optimizing conservation, water recycling, stormwater capture, groundwater storage. Under these realities, only an approach that emphasizes strategies to reduce the state's reliance on water from the Delta will be successful in achieving the Delta Vision's two goals for the Delta.

Integration of the Bay Delta Conservation Plan (BDCP) into the overall governance and planning processes for the Delta

The state should dedicate a standard amount of water to the Delta first. We are pleased to see that it is the Legislature's intent to establish an accelerated process to determine the interim flow needs of the Delta and its tributaries. **As an Early Action, the board should initiate development of minimum instream flow standard based on its instream flow determination and with input from DFG.** Also, as stated in section 85086, this flow determination done by the board would be used to facilitate the planning decision encompassed within the Delta Plan. We believe that instead, the council and the BDCP should remodel their range of alternatives to ensure the minimum instream flow determination is met. Further, **the minimum instream flow standards process must be complete for implementation before any conveyance facility is operational.**

The board should implement and enforce the flow standard, through existing authority and the Watermaster's determined purview. We are pleased that the council cannot make decisions regarding alternative conveyance options in the Delta until the board has determined the instream flow needs of the Delta. However, the language in the package is problematic because the board cannot enforce that determination. Any authorized conveyance alternative must achieve the identified instream flow needs, and the Watermaster must be able to enforce those needs as minimum flow standards once that facility becomes operational.

This legislation should require the BDCP to meet stricter criteria before it can be incorporated into the Delta Plan. As currently written, the council shall incorporate the BDCP into the Delta Plan if the council determines in writing that the BDCP has adequately analyzed, among other things, the amount of water the Delta requires, a full range of conveyance alternatives, and impacts. Also, the council must determine that the BDCP contains an adaptive management plan. This is not sufficient criteria to warrant the BDCP being incorporated into the Delta Plan. Analyzing alternatives and impacts does not ensure that the plan will lead to the best water supply or restoration options.

SB x7 1 should require the BDCP to use State Water Resources Control Board's (board) minimum flow determination as the baseline for analyzing potential conveyance facilities and flow requirements. The bill should require the council to only authorize a facility if the board has developed and implemented an instream flow determination

and begun the process to make that determination an enforceable standard, and the council finds that the facility meets the council's obligation to maintain that minimum instream flow determination. **If the BDCP does not meet these criteria, the council should not have authority to include it in the Delta Plan.**

Coequal Goals Leave the Environment Behind

The co-equal goals should not be the standard for long-term management of the state's water and its aquatic ecosystems. The standard for long-term water management in California is already established by existing law, including the Porter-Cologne Act and the public trust doctrine. Those laws mandate that it is the policy of the state to protect California's environment and species above the assurance of water deliveries. It is widely acknowledged that these coequal goals are often mutually exclusive in water management decision-making and to set them as the dual standards would establish a standard of conflict in the council's charge. This bill explicitly states in the "savings" section that it is not the intent of the legislature to degrade existing law. Consistent with that intent, the Delta Vision co-equal goals should be "considerations" instead of "standards."

Membership of the Delta Stewardship Council Gives Governor Veto Power

The Delta Stewardship Council, as the overarching body overseeing management of Delta, must be made up of the best and brightest within California. While no decision-making body can be completely a-political, it is very important that this body be made up of experts in the fields of fisheries, ecosystem biology, environmental and water law, and hydrology instead of simply political appointees. Like the California Air Resources Board, considered the pre-eminent air quality board in the country, the council should have reserve seats for the above mentioned fields to ensure that each field is represented. We support the concept of staggered appoints, but we recognized that so much is being determined in the first year or two that a system of checks and balances is needed. Therefore, we support having the gubernatorial appoints, since they are a majority of the council, confirmed by the Senate Rules Committee. This process will ensure that the public has an opportunity comment on these appointments.

The Delta Plan Should Prioritize Reducing Reliance on the Delta

It is the policy of the state and therefore should be a goal of the council to reduce dependency on the Delta for water supply. Reducing dependence on the Delta and improving statewide water supply reliability should be "an objective inherent in the co-equal goals." The existing listed objectives define how the council will design a Delta Plan. They must contain 21st century, cost-effective, proven solutions to end the conflict between ecosystem needs and water management in the Delta.

The Bond Does Not Finance this Delta Policy

Neither the bond proposals nor the policy bills dedicate funding to implement the Delta policy. This package creates two state agencies: the Delta Stewardship Council and Delta Conservancy. None of the funding provisions in the bond account for the administrative costs or the staff positions that are required to implement near-term actions and govern decisions about water management in the Delta. Proponents are asking legislators to consider voting for the policy bill on its merits, even if they disapprove of a bond funding knowingly destructive dams. But funding is necessary for the successful implementation of policy and the environmental merit of this bill hinge on the new agencies ability to deliver results.

SB x7 1 declares it to be the intent of the Legislature that funds from Proposition 84 and 1E will cover administrative costs for these new agencies. This move would negatively impact local agencies applying for that resource funding. Proposition 84 places a 15% overall cap for administrative and planning costs. The undeniably large costs of administering two new agencies will eat up this portion, handicapping access to these voter-approved funds.

We believe that it is inappropriate for the state to propose another water bond to the voters at this time, particularly the general obligation bond that is currently being proposed in the Assembly. At a time when Californians are being asked to sacrifice and accept draconian cuts to education, vital public services, and critical environmental programs, it is irresponsible to take on more debt. This is especially true since the state is having a hard time selling the bonds already approved by the voters.

Further, the current version of general obligation bond contemplates spending up to \$3 billion on new surface storage projects. PCL has always maintained that new surface storage projects are the least effective way to secure new water. Traditionally, surface storage projects were financed by the entities who wanted them. That is a good model and should be maintained. **The taxpayers of California should not be asked to pay for a project that some water agencies want if water agencies are not willing to pay for it themselves.** If dams are not an efficient use of their money, why would they be an efficient use of taxpayer dollars? Instead, PCL supports the concept of “beneficiary pays”, which is discussed in more detail below.

Similarly, we believe that surface storage projects should have to compete for funds with other projects and programs designed to store or supply new water. Public and private funding are both very limited. Both taxpayer and ratepayer dollars should be spent on the most cost-effective projects. The only way to ensure this is to require all projects to compete on a level playing field.

The Beneficiaries Should Pay for the Delta Fix

The financing component housed in pre-print SB 12 contained the “beneficiary pays” principle, which PCL strongly supports. We concur that public money should not be used to pay for private benefits, including either projects which are solely for the benefit of a particular private entity or for any mitigation or restoration projects that are necessary because of harm caused by a private entity. To this end, we support the language in pre-print SB 1 section 85400(a)(2)(A) defining “Private benefit” as including “An improvement required as a means of meeting mitigation or other requirements associated with the a project or permit.”

The package must also ensure that all funding for administration, planning and implementation of this policy is identified upfront. In addition, the funding for restoration, mitigation projects, and ecosystem enhance projects should be spent concurrently with infrastructure and water supply projects.

The Groundwater Monitoring Section is No Longer Comprehensive

The carrot-driven process for the groundwater monitoring will not produce an increase in groundwater monitoring since state funding is increasingly unreliable and counties tend not to apply for water grants unless they are applying on behalf of disadvantaged communities. Using state bond funds as an incentive to encourage counties to monitor groundwater pumping will create a disproportionate impact on disadvantaged communities that rely on bond dollars. Further, the bill sets up a catch twenty-two. Many counties lack the resources to carry out this new mandate and will not be able to apply for bond funds to do it since, under these new rules, they will be prohibited from state water funding because they lack a groundwater monitoring program. Counties will also lose access to federal funding from State Revolving Funds for drinking water and wastewater needs in small and unincorporated communities because bond dollars are used as a match.

Agencies with the ability to compel well-user participation though fees are better suited to ensure compliance with a statewide monitoring program than counties.

In closing, we are excited to see the Legislature commit itself to the challenge of improving California’s water management system and restoring the fragile and nearly collapsed Delta ecosystem and we are pleased to see the effort made to tackle the problem with all due haste. However, we remain concerned that such a complicated issue will be difficult to resolve in the next few days without unleashing unintended consequences. We are committed to participating at every stage of the decision.

Thank you for considering these comments. We look forward to the opportunity to continue to work with you on this very important issue.

Tina Andolina, Legislative Director, Planning and Conservation League
Jim Metropulos, Sierra Club
Debbie Davis, Environmental Justice Coalition for Water
Jennifer Clary, Clean Water Action
Barbara Barrigan-Parilla, Restore the Delta
Steve Evans, Friends of the River
