

Municipal Services Agency
Paul Hahn
Agency Administrator



County Executive
Terry Schutten

County of Sacramento

December 9, 2008

Secretary Michael Chrisman
Chair, Delta Vision Committee
c/o Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: Delta Vision Committee discussion paper

Dear Mr. Chrisman:

The County of Sacramento appreciates the opportunity to comment on the discussion paper prepared by the Delta Vision Committee and posted on its website on November 26, 2008. We understand that the Delta Vision Committee intends to prepare a cover letter that will be transmitted to the Governor along with the final version of the Delta Vision Blue Ribbon Task Force's Strategic Plan. The cover letter will contain the Delta Vision Committee's recommendations to the Governor regarding the topics covered in the Task Force's Strategic Plan. It is our understanding that the discussion paper is intended as a draft of the Delta Vision Committee's recommendations to the Governor.

Over the past several months, the County of Sacramento, along with the four other Delta counties, have worked with you and other members of the administration to address our region's concerns about the Delta Vision proposals. We appreciate the efforts that you and your staff, particularly Joseph Grindstaff, have put into these meetings. However, the County continues to have concerns about the Delta Vision process. We do not believe that the discussion paper adequately addresses these concerns. For further elaboration of the County's concerns, we refer you to our letters to Philip Isenberg, Chair of the Delta Vision Blue Ribbon Task Force (dated August 13, 2008; September 3, 2008; September 30, 2008; and October 17, 2008), copies of which are attached hereto.

Overall, we note that the discussion paper is vague as to details and explanations for many of its stated objectives. There is significant need for clarification. In particular, it is not clear whether the Committee is accepting the Task Force's controversial recommendations to reallocate and reassign water rights. Communities have developed in reliance on their water rights, which we believe

Michael Chrisman, Delta Vision Committee
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cannot be taken or infringed upon without payment of just compensation. The Task Force also advocated elimination or substantial changes to the area-of-origin laws. These laws were part of the compromise that permitted the construction of the federal and state water projects. It is not clear from the discussion paper that the Committee intends to recognize and respect the rights afforded by these statutes. The Committee should clearly articulate its recommendations on these very important issues.

The County's comments on the specific topics included in the discussion paper are set forth below. For the ease of the Committee's reference, the points raised below are presented in the order that they appear in the discussion paper, and we have reproduced the text to which our comments relate.

Using Existing Authorities and Funding

The discussion paper states: *Complete the Bay-Delta Conservation Plan (BDCP) and associated environmental assessments, leading to the rapid implementation of ecosystem revitalization and conveyance water improvements by acquiring permits required to keep water exports in compliance with species protection laws, improve quality of exported water, and protect water supplies against earthquakes and floods. This process and the associated environmental evaluations are key to moving forward.* (Page 2, fourth bullet.)

As the County has noted in several of its previous comment letters, the Delta is recognized as a fragile ecosystem. It will be important to conduct adequate environmental review, to the best of current abilities, prior to implementing any changes that will modify the ecosystem. Even well-intentioned actions, if implemented rapidly and without adequate thought and analysis, may lead to unanticipated harmful effects.

The discussion paper states: *Update Bay-Delta regulatory flow and water quality standards to protect beneficial uses of water. Fully implement these new and existing standards.* (Page 2, seventh bullet.)

It is not clear what you mean by your proposal to "update . . . regulatory flow and water quality standards to protect beneficial uses of water." Existing flow and water quality standards already protect beneficial uses of water. By suggesting that these standards need to be updated, the Committee's proposal implies that existing standards are inadequate, but it does not identify the perceived deficiencies. What new standards does the Committee feel are necessary, and how does it propose that they be "fully implemented"?

Possible New Authorities and Funding

The County reiterates its comments on the inadequacy of the two stated goals. The County also reiterates its comment that it is not appropriate to increase the water supply reliability for those who rely on Delta exports at the expense of water supply reliability for other water users. If the Delta Vision is to be implemented successfully, it must not shift impacts onto the County and other water users within the watershed in order to provide additional supplies to users outside of the watershed.

Water Supply Reliability

The discussion paper states: *Continue to evaluate conveyance through BDCP and the EIR/EIS process already underway. Conveyance by itself does not require funding or changes in authority; however, any public share of costs for the BDCP ecosystem restoration objectives may require statutory authority and funding.* (Page 3, No. 1, first bullet.)

BDCP and its associated environmental review documents seek to improve conveyance by altering the points of diversion for the water diverted by the State Water Project and the federal Central Valley Project. Given this context, it is not clear what you mean by the statement "conveyance by itself does not require . . . changes in authority." Obviously, if the points of diversion for the Projects are changed, the permittees will need to seek changes in their permits, so the proposed change in conveyance would require the permittees to obtain additional regulatory approvals.

We note that the many of points of diversion that BDCP is evaluating are located within Sacramento County, and we restate our concerns about the impacts associated with these diversion points.

The discussion paper states: *Enhance and expand the State Water Resources Control Board's water rights accountability, including but not limited to: repeal of statutory exemptions from water diversion and use reporting, streamline process to impose civil penalties for violations of water right permits and licenses, provide interim relief authority for water rights actions to prevent irreparable harm to the environment and other water right holders, provide authority to require technical or monitoring reports from persons who divert water to obtain information needed to protect the environment and other water right holders, and initiate a process to clarify water rights.* (Page 3, No. 2, second bullet.)

Your recommendation to "enhance and expand the State Water Resources Control Board's water rights accountability" is unclear. "Accountability" seems to be used to mean "authority." However, the SWRCB already has the authority to

investigate diversions of water and order the cessation of illegal diversions. Additional authority is not needed, but the SWRCB should be urged to exercise its existing authority and discretion to stop illegal diversions.

It is not clear what "statutory exemptions from water diversion and use reporting" the Committee is recommending be repealed.

Likewise, it is not clear what the Committee means by its recommendation to "initiate a process to clarify water rights." What type of process is anticipated, and what is the Committee seeking to clarify?

Each of the next two points, "streamline process to impose civil penalties for violations of water rights permits and licenses" and "provide interim relief authority for water rights actions", have the potential to infringe upon constitutionally protected property and due process rights. We urge the Commission to be cautious in recommending any measures that would result in takings of property; as such measures are almost certain to provoke lengthy litigation that will only impede any progress toward a solution for the Delta.

The discussion paper states: *Enact legislation requiring urban water suppliers or regions to reduce their per capita water use sufficient to achieve a statewide average 20 percent reduction in per capita water use by 2020, expand implementation of agricultural efficient water management practices. Streamline the State Water Resources Control Board's authority to take enforcement action and to assess monetary penalties for failure of water suppliers and users to achieve conservation targets and implement best management practices.* (Page 4, first bullet.)

More effective water conservation is certainly part of the solution to the State's water supply deficiencies, and the County supports the implementation of sensible and feasible water conservation programs.

It is not clear what the Committee intends with its recommendation to "expand implementation of agricultural efficient water management practices." More elaboration of what the Committee aims to achieve, and how, is needed.

The County is not convinced that providing the SWRCB with new "streamlined" authority to penalize water users to failure to achieve conservation targets is the most effective means of achieving conservation. One of the primary impediments to effective water conservation is the social acceptability, or lack thereof, of the measures necessary to attain real water savings. The County believes voluntary incentive-based programs, combined with public education and outreach efforts, is much more likely to achieve success in changing the public mindset about water use than are penalties on water purveyors.

The discussion paper states: *Provide financial incentives through Integrated Regional Water Management to promote alternative supplies such as reused and recycled water, stormwater and desalinated water. (Page 4, No. 3, first bullet.)*

The County agrees that alternative water supplies should be examined. It is certain that desalination could supply Southern Californians' needs even if the volume of Delta exports is curtailed. However, it should be recognized that the costs of desalination, and development and distribution of reused water and of stormwater, are so great that it will not be sufficient to "provide financial incentives through Integrated Regional Water Management." Rather, additional sources of public funding will be needed to actively promote desalination and reuse projects.

Ecosystem Restoration

The discussion paper states: *Require the Water Boards and the DFG to expand their evaluation of potential stressors of the aquatic habitat. Specific areas requiring attention are stormwater runoff from urban areas, agricultural drainage, and ammonia discharges from wastewater treatment plants. This activity should be closely coordinated with the Science and Engineering program and a Science and Engineering Board, which will require financial support. (Page 4, No. 4.)*

Sacramento Regional County Sanitation District has already submitted numerous comments regarding ammonia discharges from wastewater treatment plants. Those comments are incorporated herein by reference, as are the County's previous comments related to urban stormwater runoff.

The Regional Water Boards are already charged with protecting water quality. Establishing a new Science and Engineering Board and assigning it a mission that is duplicative of the Regional Boards' existing functions is wasteful. Also, we understand that one of the principles of the Delta Vision process is to coordinate regulatory activities so there is clearly delineated jurisdiction and authority. By creating potentially conflicting jurisdiction and responsibility, this proposal undermines that goal.

Enhancing and Protecting the Delta

The discussion paper states: *Establish a Delta Investment Fund to provide funding and a credit base for a more broad-based and resilient Delta economy, as soon as possible.*

Structure the fund to accept federal, state, local and private funding, ultimately achieving a base of \$50 to \$100 million, to ensure long-term stability. Once created, the fund should be placed under the joint management of the Delta Protection Commission and a consortium of local governments to ensure that it is used for the benefit of local economies. Expenditures of funds should be consistent with the Delta Plan recommended in the next section. (Page 5, No. 2.)

As the Committee correctly recognizes, the extensive habitat restoration and preservation measures Delta Vision proposes to carry out within the Delta will have significant adverse impacts on the local economies. The County appreciates the Committee's understanding that these negative economic impacts must be addressed. However, we are not certain of the basis for the specified level of funding. The County is not sure that \$50 to \$100 million will be sufficient to offset the economic impacts of the Delta Vision. The County also notes that it is not appropriate to require local agencies such as the County to fund the Delta Investment Fund, insofar as this fund is intended to offset the economic impacts to those local agencies. The five Delta counties should not be required to pay for the mitigation to address the adverse impacts that the Delta Vision will wreak upon them.

The discussion paper states: *Require the secretaries . . . to initiate a focused and coordinated effort to identify projects and programs that have the potential to quickly improve the economic vitality of the Delta. These efforts will require local governments, the Delta Protection Commission and business to work together to identify these projects and programs, including those related to agriculture, recreation, and tourism, and focusing optimum leverage of federal, state, local, and private sector resources to address critical economic needs. The results of this effort shall be included in the Delta Plan described in the next section. (Page 5, No. 3, first bullet.)*

One of the stated purposes of the Delta Plan is to curtail development in the Delta. It is not clear to the County how this goal can be reconciled with the Committee's suggestion of sponsoring "projects and programs" to improve the economic vitality of the Delta. Projects must be built somewhere. If the Delta Plan curtails development in the Delta, it will necessarily also curtail the ability of the five Delta counties to implement projects to improve local economic conditions. For example, recently introduced legislation would prohibit development which does not further the use of land within the Delta for agricultural or habitat protection purposes. Gross limitations upon land use do not equate to fostering economic vitality.

Effective Governance and Reliable, Sufficient Funding

The Committee's recommendations on pages 6 and 7 of the discussion paper relate to the short-term and long-term governance of the Delta. It is not clear to the

County, however, what the Committee is recommending. What is the expected role of the Delta Protection Commission? Who would sit on the "enhanced" Commission? What types of tasks and activities would be handled by the Delta Protection Commission? What would be the relationship of the Delta Conservancy to the Delta Protection Commission? What types of tasks and activities would be handled by the Delta Policy Group? Why does the Committee feel that it is necessary to have a "long-term governance entity as a successor to the Policy Group"? What precludes the Policy Group from serving as the long-term governance entity? Why is it necessary to have all three (or four, if the Delta Policy Committee is replaced by a long-term entity) of these groups be given authority over the Delta? How is the creation of four new groups with overlapping authority over the Delta going to clarify regulatory jurisdiction in the Delta and promote governmental accountability?

Implement Strategic Finance for Delta Sustainability

The discussion paper states: *Work with the Legislature to provide authority for statewide or regional water supply and environmental resource protection fees. This fee authority could apply broadly to all water uses in the state and expenditures of proceeds from the fee should support the core resource management activities of the DFG, the DWR, and the State Water Boards, as well as activities consistent with the Delta Plan. The Policy Group or long-term governing body should have authority to impose fees applied in specific circumstances when necessary and when consistent with the law. The authority to set fees and the responsibility for the allocation of the proceeds, consistent with legislative authorization and oversight, should rest with the Policy Group and its successor. (Page 7, No. 5, first bullet.)*


The ability to impose fees is limited by law. The County is not certain that it agrees that the proposed fees "could apply broadly to all water uses in the state."

Conclusion

The County of Sacramento appreciates this opportunity to submit comments on the Committee's discussion paper. As Supervisor Nottoli noted in his remarks to the Committee, we look forward to working with you to develop recommendations that can meet the needs of the Delta counties and ensure a viable long-term solution for the Delta, its communities, and its people.

December 9, 2008

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul J. Hahn', with a long horizontal line extending to the right.

Paul J. Hahn, Agency Administrator

Attachments: Comment from County of Sac, 8-13-08
Comment from Co. of Sacramento, 9-30-08
Comment from Co. of Sacramento, 9-3-08
Sac County Comment on Fifth Staff Draft 10-17-08

cc: Sacramento County Board of Supervisors
Terry Schutten, County Executive
Honorable Darrell Steinberg
Honorable Dave Jones
Honorable Roger Niello
Honorable Dave Cox
Honorable Dan Lungren
Honorable Doris Matsui
Delta Task Force - County
Susan Muranishi, County Administrator, Alameda County
Sharon Jensen, County Administrator, Yolo County
John Cullen, County Administrator, Contra Costa County
Manuel Lopez, County Administrator, San Joaquin County
Michael Johnson, County Administrator, Solano County
Ray Kerridge, City Manager, City of Sacramento
Laura Gill, City Manager, City of Elk Grove