



October 7, 2009

The Honorable Arnold Schwarzenegger
Governor
State Capital Building
Sacramento, CA 95814



The Honorable Darrell Steinberg
Senate President pro Tem
State Capitol Building
Sacramento, CA 95814



The Honorable Karen Bass
Assembly Speaker
State Capitol Building
Sacramento, CA 95814



Dear Governor Schwarzenegger, Senator Steinberg, and Speaker Bass:



We applaud your commitment to addressing California's water challenges. Water is a fundamental resource essential for a healthy population, environment, and economy. Without equitable and sustainable management of California's water resources we face an uncertain future particularly in the face of climate change.



At the heart of this is the fate of the Bay-Delta ecosystem – the most important estuary on the west coast of both Americas. Other than climate change, saving this estuary is the most important environmental challenge before all of us in California; indeed, the nation. The biological significance of the Bay-Delta is unparalleled. Future generations will judge us harshly if we do not act wisely now to save it and the fish and wildlife, the farms and the communities it supports.



You will find, attached to this letter, a set of policy recommendations endorsed by the signatories of this letter. We believe that implementation of these policies will put California on the right track toward a resilient water system founded on a sense of stewardship and responsibility for the precious water resources we are privileged to have.



Our proposed policy recommendations fall into three categories that include values-driven management, reform of existing agencies, and sustainable financing. We believe that focusing reform in these areas will be cheaper to implement, produce more sustainable outcomes, and will ultimately provide the reliable and resilient water resources that will support a healthy California public, environment and economy.





Key to our proposal is a movement away from process driven management and toward outcomes driven management. We propose investment in sustainable, equitable, and resilient water infrastructure based on a coordinated suite of short, medium, and longer term solutions that move us steadily toward self-sufficiency, equity, and ecosystem health. A management system based on outcomes will include benchmarks that allow us to shift course if a particular strategy is not producing the outcomes that we need to achieve our goals.



Given the magnitude of the problems facing California's water system, we cannot afford to fail, but at the same time, we must insist on solutions that truly solve the problems. We feel strongly that the principles outlined in the attached document offer an innovative approach to holistically meeting the challenges before us.

California Sportfishing Protection Alliance

We look forward to continuing this important effort.



Sincerely,

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California Sportfishing Protection Alliance

Mark Gold, Executive Director
Heal the Bay



Martha Guzmán
California Rural Legal Assistance Foundation

Charlotte Hodde, Water Program Manager
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Linda Sheehan, Executive Director
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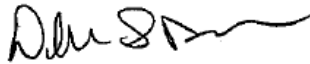
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California Water Policy Recommendations

Values-Driven Water Management

The best available science suggests that, “it is difficult, at best, to achieve clear and transparent policy objectives that are ethical as well as practical through a political process characterized by interest group negotiation, bargaining, and brokered compromise.”¹ Instead, leading water policy scholars urge values-driven policy design.

Three over-arching values fundamental to California water are sustainability, equity, and environmental justice. Key to values-driven water policy design in California is a strong partnership between the federal and state governments. Without full participation by federal agencies, California will forever be hampered in its ability to achieve the desired outcomes. Following is an articulation of the elements embedded in each value. These values would govern both the financial and policy decisions made by existing state agencies in regard to the Delta and other statewide water decisions.

Value: Sustainability

Regional self-sufficiency

It is vital that California’s water resources be managed at a regional level with the goal of achieving regional self-sufficiency. We recognize that thanks to our engineered water system there may be regions in the State that may never be entirely regionally self-sufficient. Simply continuing to re-engineer the Delta will not provide relief to Californians for the next decade. However, our statewide and local investments should be prioritized to fund activities and actions that support regional self-sufficiency in both the short and long term. Regions that import water should be required to verify their plans, actions, and activities that will result in actual reduction of reliance on imported water. The state of the Delta ecosystem and the expected changes in available water supply due to climate change make it imperative that actual reductions occur. Maintaining existing imports is not sustainable over the longer term.

Fortunately, regional self-sufficiency is actually a winning strategy for local communities. Many options for attaining regional self-sufficiency are actually cheaper than importing water and have added environmental and community benefits, including local job creation. For example, the LA County Economic Development Corporation (LAEDC) assessed nine water supply options for Southern California. In their analysis they found that urban water conservation and local stormwater capture were both more cost-effective strategies than water import and provided the added benefits of creating near term improvements, positively impacting the environment, and reducing green house gas emissions. Together, those strategies have the potential to produce 1,250,000 acre feet of water per year. That is more than LA’s current Colorado River supply.²

Each region should analyze the appropriate array of water supply augmentation strategies that meet the particular terrain and needs of the region, and set aggressive mandatory goals for reducing potable water use and demand. On the demand side, regions should implement conservation strategies to achieve a goal of reducing gross per capita consumption by 20 percent by 2020, or residential per capita consumption to no more than 55 gallon per day, whichever is highest.

¹ Ingram, Helen, Feldman, David. and Whitely, John. (2007) “Water and Equity in a Changing Climate.” In *Water, Place and Equity*, eds. Whitely, John, Ingram, Helen, and Perry, Richard. Boston: MIT Press.

² Freeman, Gregory, Myasnick, P. and Lee, M. (2008). *Where will we get the water? Assessing Southern California’s future water strategies*. Available at: www.laedc.org.

In addition, a mandate that 20 percent of regional water demand be met through nonpotable sources by 2020 should be instituted. This provides equity among all water users and a large incentive for increased stormwater capture and reuse and water recycling

1) General Regional Self-Sufficiency

a) Conservation

Conservation is, generally speaking, the cheapest, fastest to implement, most environmentally sustainable, most climate-proof, and—when programs are designed properly—the most equitable means by which to augment water supply. The LAEDC estimated that it would cost approximately \$280 per acre foot to institute conservation measures in Southern California. Currently, Metropolitan Water District charges \$695 per acre foot for treated water and this is prior to a proposed 20% increase in rates.

The benefits of conservation go beyond cost and water savings. Lower water use results in significant energy savings and should play a key role in attaining the greenhouse gas reduction goals of AB 32. Conservation programs that use community based organizations for program implementation provide local, green jobs, support organizations that provide critical support for local communities, and allow water agencies to tailor conservation programs to the needs of the communities they serve.

In addition, to address the challenging nature of projecting revenue and developing capital improvement plans, investments in water infrastructure should be guided by a loading order for water similar to the loading orders used for electricity.³ The loading order for energy focuses on decreasing demand by increasing efficiency and demand response programs, then requiring that any new needs be met first with renewable and distributed generation. If water agencies were to transition to this model, they would still be able to make appropriate projections to ensure enough revenue for operation and maintenance expenses as well as capital improvement projects.

b) Tiered Water Rates

Higher prices in combination with other programs can help reduce wasteful water use. Increasing water rates for excessive non-essential use of water can help deter waste, especially in combination with public education and conservation programs. Rate increases should be structured in such a way as to protect low-income ratepayers, accounting for family size. With those protections in place, tiered rates provide a base amount of water at an affordable rate for most ratepayers, and then ratchet up the price for the very highest users to provide an incentive for excessive users to reduce water use. Tiered rates are only possible, however, in areas that are metered and use volumetric pricing. Metering is a pre-requisite for tiered water rates.

c) Mandatory Water Metering for All Users

One of obstacles to meeting our water supply needs is the lack of consistent and accurate estimates of actual water use. To date, California does not have mandatory water metering in place for all urban, industrial, and agricultural users. A lack of metering infrastructure only encourages further waste and unreasonable use of our water supply and puts further pressure on the Delta. Current law requires urban water suppliers that receive water from the Central Valley Water Project

³ California Energy Commission. (2005) *Implementing California's Loading Order for Electricity Resources* available at <http://www.energy.ca.gov/2005publications/CEC-400-2005-043/CEC-400-2005-043.PDF>

to install water meters on their residential and nonagricultural commercial buildings by 2013 (AB 2572, Kehoe, 2004); all other urban water suppliers must install water meters for their municipal and industrial users by 2025. There is currently no metering requirement for agricultural users despite the fact that this sector accounts for 80% of the state's water use. We cannot wait another 15 years for metering to be installed throughout the state as water demand increases. At a minimum, all users, including agriculture, should have water meters installed and read by no later than 2015.

d) Water Recycling

In February 2009, the State Water Resources Control Board passed a comprehensive and widely supported water recycling policy for California. Water recycling moves us to local sustainability and reduces our reliance on imported water supplies. At a minimum, the policy calls for at least one million acre-feet per year of recycled water by 2020 and two million acre-feet of recycled water by 2030.

Water recycling requires an initial capital outlay including transport and piping, which must be considered in its costs and could be incentivized through state funding. The most recent estimated cost to upgrade a secondary treatment plant to produce Title 22⁴ recycled water is \$500 an acre foot. Most inland privately operated treatment works (POTW) are tertiary or advanced secondary plants that already produce Title 22 water. To upgrade a tertiary plant to the advanced treatment levels of microfiltration and reverse osmosis is approximately \$800 per acre-foot, but varies by agency based on existing infrastructure and the necessity of constructing additional distribution infrastructure. Orange County's Advanced Water Purification Facility is currently producing highly treated water for groundwater recharge at a net cost of \$561 an acre-foot (including all capital, operations and maintenance and grants/subsidies).

Recycled water has several important advantages that should be incorporated into any cost-benefit analysis. First, it reduces dependence upon water supplies diverted from the environment. Second, it eliminates waste discharges that can lower water quality downstream and pass the burden of treatment onto the downstream user. Third, it creates a locally sustainable water supply source. Finally, in some parts of the state, particularly southern California, water recycling can require less energy to produce than imported water. Note that it is critical to have wastewater systems in place to be able to maximize the potential to recycle.

e) Groundwater Protection, Clean-up and Management

California has considerably more groundwater than surface water. In any given year, groundwater constitutes between 40% and 60% of our statewide water supply. In some regions of the state, groundwater provides 90% of the drinking water supply. Of our accessible groundwater, much (just how much is an unknown quantity due to lack of statewide monitoring) is costly to use because of contamination. However, treating groundwater is more climate-resilient because groundwater supplies are not subject to evaporation. Further, sustainable management of groundwater supplies saves energy and eliminates the risk of groundwater contamination impacting surface water supplies. Finally, groundwater is an important source of water supply during droughts in many parts of the state. As droughts become more frequent (as predicted in climate change models) it becomes even more imperative that we protect, restore and manage this resource so that it is available when it is most needed.

⁴ Title 22 of the California Code of Regulations regulates recycled water quality and use from a public health perspective.

f) Stormwater Capture and Reuse

Stormwater capture becomes ever more necessary the more urbanized we become and the more black-top we lay. The LAEDC estimates that this water, amortized over 30 years, will cost a little more than \$350 per acre foot depending on the size and scale of the project.⁵ This is a cost effective investment for the average community member concerned about maintaining affordable water rates.

g) Gray Water Use

Gray water is the re-use of water from washing machines, sinks, and showers. The California Building Standards Commission adopted new codes that allow the installation of residential gray water systems for purposes of outdoor irrigation without the requirement of a building permit. This action immediately reduces the cost of a home gray water system from thousands of dollars to a few hundred. The code requires treatment of gray water to Title 22 standards for indoor use. This offers a cost-effective alternative or supplement to recycled water that further promotes regional self-sufficiency.

h) Conjunctive Use

Conjunctive use is the practice of co-managing groundwater and surface water supplies by utilizing surplus surface water to recharge groundwater aquifers so that the water is available for future use. This practice has the benefit of avoiding evaporation that occurs when water is stored above ground. When using a clean and protected aquifer, water stored underground is less vulnerable to pollution, and groundwater storage is more environmentally friendly because it avoids the major disruption of waterways necessary to accommodate construction of surface storage facilities.⁶

i) Investing in Watershed Health

Watershed maintenance and restoration provides a host of water benefits, including water supply, water quality, flood control and stormwater infiltration. Community based watershed organizations provide a key link between a community and its water supply, and are a basic building block of a health ecosystem. Sustained support for local watershed efforts is a necessary first step to achieving regional water self-sufficiency.

2) Region-Specific Sustainability

a) Delta Fishery and Water Quality Standards

Because so much of California's developed water passes through the Delta, maintaining and restoring the Delta ecosystem is of statewide interest. To succeed, we must implement specific and measurable standards for the Delta including counts of oceanbound smolts at various locations within the Delta, as well as fish counts throughout the Delta watershed for native and desirable species. Likewise, measurable water quality standards need to be verified at multiple Delta locations and Water Board regulations should be designed and proven to eliminate problematic agricultural

⁵ Freeman, Gregory, Myasnick, P. and Lee, M. (2008). *Where will we get the water? Assessing Southern California's future water strategies*. Available at: www.laedc.org.

⁶ Carle, David. (2009) *Introduction to water in California*. Berkeley: University of California Press.

and industrial discharges and draining into the Delta. Additionally, there should be a prohibition on conditions that result in net reverse flows on the San Joaquin River and in Delta channels. When standards are not met for fisheries and water quality standards, timely enforcement must occur and the violator must be held accountable by the State Water Resources Control Board.

b) Investing in Water Quality Upstream

Investment in water quality improvements in the upper watershed will have direct impacts on the water quality entering the Delta. The old CalFed decision area, which stops at the dams in the lowest parts of the watershed, is inappropriate for developing and managing a truly sustainable water system. Upstream water quality projects such as storm water management, abandoned mine clean-up and alpine meadow restoration in the Sierra Nevada region above the dams need to be funded. Reoperation of the State Water Project to minimize mercury methylation in the on-stream impoundments also needs to be prioritized.

Energy Efficiency

Water management strategies supported by statewide investments should be required to meet established energy efficiency standards. A sustainable water future must include consideration of our water management strategies' contribution to green house gas emissions.

Climate Resilience

We must assess our water management strategies to ensure that large investments will prove to be climate resilient in the face of rising temperatures, reduced snow pack and higher variability in precipitation patterns. We must also ensure that our water management strategies are coordinated and integrated with our land use management decisions and that both are designed to adapt to and avoid the potential catastrophic impacts of climate change.

Value: Equity

1) The Public Trust

A key to ensuring California's natural environment is protected and public health and access to clean drinking water is improved is to include a constitutional amendment that places the public trust doctrine on a constitutional footing equal to that of reasonable use. This amendment would, in essence, implement the Supreme Court's Mono Lake decision⁷ and a more recent Bay-Delta decision by creating a presumption that the trust must be protected whenever feasible. Further, infeasible must be defined strictly to ensure that it only includes cases in which it is impossible to overcome as opposed to simply a political question.

2) Sustainable Farming Practices

Investment in water conservation in an urban setting is a critical and direct investment in the most efficient use of existing water supplies. Maximizing water conservation measures at the local level is particularly critical for water importers. Efficiency is also important in the agriculture sector, where improved irrigation technology, more judicious irrigation scheduling, and other measures can reduce water use while maintaining crop yields. However, efficiency measures alone cannot be used

⁷ National Audubon Society v. Superior Court (Department of Water and Power) (1983) 33 Cal.3d 419

in the same way for agriculture as in urban areas; producers' ability to maintain crop yields while reducing water needs depends on changing agricultural production practices as a whole. Cropping patterns, nutrient and chemical inputs, and other factors affect groundwater recharge rates, water quality and drainage. Agricultural producers must commit to implementing sustainable farming practices that include water conservation, soil management to increase moisture retention, appropriate crop choices, and reduced pollution discharges.

3) Third Party Impacts, Including Delta Communities

Third-party impacts are neither identified nor mitigated in traditional impact assessments. For example, renters who lose their homes in a flood, farmworkers who lose their jobs when fields are fallowed for a water transfer, or fishing communities whose economies are decimated by industry losses are rarely acknowledged or compensated. Instead, the primary parties involved, most often defined as property owners, are recognized, and may receive compensation for the impacts of the action. However, those whose homes, livelihood, or quality of life are impacted indirectly by the action are currently neither recognized nor compensated.

Communities that make economic sacrifices for improved sustainability of the state's watershed should be identified and made partners in the decision making process, with a say as to the outcome derived from their sacrifice. In addition, communities making economic sacrifices to protect the sustainability of the watershed should be awarded just financial compensation.

As in all other parts of California, a Delta conservancy should be based on the principles of a state-local partnership. Elected officials from the Delta, or their designees, should have at least 45% representation in any conservancy governance. In addition, because Delta communities will be forced to make sacrifices for the benefit of the rest of the state, a Delta conservancy should provide funding for ecosystem protection and economic incentives for agricultural activities to support ecosystem protection. A Delta conservancy should help to create a world-class region in which both agriculture and healthy habitats for aquatic and terrestrial species complement each other. A Delta conservancy should be adequately funded to achieve these ends.

4) Assistance with and Respect for Regional Planning and Management

California's regions reflect a huge variation in climate and terrain, making it impossible to establish a one-size-fits-all solution. Instead, equity considerations require that each region's needs and opportunities be considered individually and that statewide policy be flexible to provide the right incentives and regulations to support the most efficient and effective regional solutions available.

5) Tribal Consultation

California Tribal Nations hold a unique place in California Water history due to the un-ratified treaties of the 1850s, which, while used to cede millions of acres of tribal land to the state in exchange for reservations, did not abrogate aboriginal water rights. The change from the Riparian Doctrine to that of Prior Appropriation fails to consider tribal concerns when allocating water from California's rivers, streams and the Delta proper. It also fails to consider the tribe's "place in line" when discussing first use. This history mandates that California consult with all of its tribes (those federally recognized and those historic tribes listed on the Native American Heritage Commission SB-18 consultation list) to discuss the impacts of water related projects within and outside of the Delta and those streams and rivers that feed into and out of the Delta proper. Impacts from actions taken to address a problem within a watershed area affect areas outside that area where tribal people continue their tribal practices. The State must develop a meaningful method of consultation that

mandates procedures across all departments and agencies to fully meet the requirements of meaningful and open consultation and include tribal membership on committees and commissions dealing with water and land use issues.

6) Water Rights for the Ecosystem

The steep decline in Bay-Delta Estuary health and accompanying statewide water supply challenges, which are being exacerbated by climate change, bear witness to the increasing need to recognize in law the scientific links between ecosystem and human health. Currently, ecosystem water needs are addressed only indirectly, through such methods as conditions in permits, water transfers, and ESA application. None of these otherwise important tools are actual quantified water *rights* for the ecosystems; as a result, ecosystem water needs are consistently relegated to a tangential role in state water planning, until the ecosystems or their non-human inhabitants are at the brink of collapse. That is when the ESA hammer falls – abruptly, with little foresight, and often too late. California needs a legal system that allows the state to plan effectively for the water needs for *both* Californians and California ecosystems. This can be achieved by granting ecosystems the right to be at the planning table from the beginning through the granting of sufficient water rights needed for healthy ecosystems, enforced by independent legal guardians representing the ecosystems.

Value: Environmental Justice

1) Provision of Safe, Affordable Water for Everyone in California

Everyone in California should have the access to safe, affordable water that is necessary for basic human needs including drinking, bathing, and cooking. This is a value that Californians continually endorse in their affirmative votes on “Safe Drinking Water” bonds. Unfortunately, existing allocation, pricing, and pollution regulation policies ensure that hundreds of thousands of Californians go without this very basic human need every day. A values-based water policy would ensure that statewide policies were designed to prioritize provision of resources for basic human needs.

2) Impacts on Subsistence Fishing

Communities around the State rely on the fish they catch in local streams and reservoirs to supplement their daily diet. Many of these community members have no idea that they may be poisoning their families because the fish are contaminated with mercury, PCBs, or other contaminants. Others recognize the risk, but the urgency of putting food on the table for their families overrides their concerns about contamination. California’s water quality regulations must result in healthy waterways that support healthy fish populations in the future. This must include avoidance of activities that increase contaminants even when those activities, such as wetlands restoration, are designed to benefit the ecosystem in other ways. In the interim, until we achieve that goal, we must identify alternative strategies to reduce exposure. Posting a sign at fishing spots is not enough; we must identify and provide either alternative, safe, accessible fishing locations or alternative fish supplies to protect these vulnerable communities.

3) Water Rates

Affordability is a necessary component to ensure access to water. There are two important elements of affordability. The first is to ensure that water agencies serving disadvantaged communities offer cost-effective and efficient water supply options and avoid or mitigate transferred costs, such as the cost of treatment to ameliorate someone else's pollution. The second is the provision of a lifeline water rate and protection in tiered rate structures. A lifeline water rate assures that a basic amount of water will be affordable. Tiered water rates, however, can unintentionally increase a disadvantaged household's water rates when the tiered rate is based on an average number of people in a household. This is because low-income community members tend to have a higher than average number of individuals living in each housing unit. So, while their per capita water use may be very low, their use by housing unit may be higher than the average in their neighborhood, leaving them paying higher water rates.

Reform of Existing Agencies and Empowerment to Exercise Authority

The State Water Board and Department of Fish and Game have the existing authority necessary to protect and restore the Delta and to restore and protect all of the State's precious water and fishery resources. Instead, political wrangling has left in-stream flow rulings on a shelf gathering dust. Water quality standards are routinely violated, resulting in a comical exchange of letters that does not alter any agency's practices. Other agencies, such as the Department of Water Resources, could be more strategic in their planning and management of the State's water resources.

Specifically, the following actions are necessary to reform and empower existing agencies:

- 1) Require the State Water Board to implement existing in-stream flow rulings.
- 2) Implement statewide regulation of groundwater quality and supply.
- 3) Reinforce the roles and responsibilities of the State Water Board and the Department of Fish and Game in the Bay Delta Conservation Plan process, including specific criteria they must consider when certifying the NCCP and when the SWRCB is considering permits to implement the BDCP.
- 4) Provide necessary resources and require the SWRCB to enforce existing water rights including consideration of water rights for the environment and tribal water rights.
- 5) Require the Department of Water Resources to develop a strategy for managing the State Water Project that includes scheduled rationing and cold water habitat protection earlier in forecasted droughts.
- 6) Include Federal agencies in the exercise of authority to ensure compliance.
- 7) Provide stable and sufficient funding to allow agencies to perform their mandated functions.
- 8) Actively review water use in the state through the lens of Water Code Section 275 and Article X, Section 2 of the California Constitution, and ensure that the State Water Board and/or DWR consistently meet the mandates of these provisions.

Sustainable and Integrated Financing

California's finances are in a shambles. We cannot afford to continue in our belief that general obligation bonds will provide the funding necessary to meet California's water needs. General obligation bonds are suitable and necessary for discrete and lasting projects, but are not suitable for ongoing activities that require a steady funding source. Ongoing financing should not be dependent on a series of general obligation bonds to create a source of incremental revenue.

Instead, we must strive to develop a balanced financing plan that includes the array of funding sources available, including user fees, polluter fees, local taxes, statewide taxes, revenue bonds, and federal investments in addition to general obligation bonds. A sustainable financing plan should include:

- 1) Integration of funding decision-making with policy decisions. Priorities in funding should reflect the state's value-based system to fully incentivize the policies of state agencies.
- 2) Identification of types of funding and the changes necessary in statute to make the best use of each funding source.
- 3) Identification of the best fit between specific water related investments and particular funding mechanisms.
- 4) Clear definitions of mitigation, public benefit, and beneficiaries to ensure that costs are being appropriately allocated.
- 5) Full identification of opportunities to improve our watersheds from the headwaters to the sea and development of funding priorities that reflect the potential contributions in each area of a watershed. For example, investments in the headwaters may produce far greater dividends toward meeting flood management and water quality objectives downstream than downstream projects.
- 6) Partnership with the Federal government to identify opportunities for federal funding. Other regions of similar ecosystem value, like the Chesapeake Bay and the Great Lakes have received hundreds of millions of federal dollars.
- 7) Expedited expenditure of existing bonds on the most urgent projects,
- 8) Identification of water benefits that can be achieved through non-water projects or funding (such as stormwater measures in freeway projects or education about sustainable soil management through the Fertilizer Research and Education Fund.)
- 9) Provision of full funding to programs that provide educational, technical and financial assistance to encourage on-farm water conservation and sustainable farming practices, including federal conservation programs such as EQIP, state Agricultural Extension Services, and grants to non-governmental organizations that work directly with producers. These programs are currently underfunded.