



Delta Counties Coalition

Contra Costa County · Sacramento County · San Joaquin County · Solano County · Yolo County
"Working together on water and Delta issues"

October 7, 2009

The Honorable Darrel Steinberg
President Pro Tempore of the California State Senate
State Capitol, Room 205
Sacramento, CA 95814

RE: Concerns of the 5 Delta Counties

Dear Senator Steinberg:

At the outset, the five supervisors representing San Joaquin, Solano, Contra Costa, Yolo and Sacramento Counties want you to know how much we appreciate the time and energy you have personally dedicated to the problems facing the Delta and your clear sensitivity to the unique place we Delta Counties have in addressing and solving these problems. As you point out in your letter, we are unified in our efforts to protect the Delta while ensuring statewide water supply reliability and restoration of the Delta ecosystem. The participation of the Delta Counties in every level of Delta governance is of vital importance.

We understand from your letter that you believe the proposed Delta Package provides both comprehensive policy and financial protection for the Delta Counties. However, we find some serious gaps in that protection. We take you at your word about wanting our candid comments and are providing you with some specific comments about the shortcomings in the most recent versions of the delta package.

Our detailed comments are made with our oft-stated objectives always in mind. Those objectives include:

1. Water supply and the quality and reliability of that supply, not just for Southern California, but for the 4 million Californians who reside in our 5 counties.
2. Flood control and the maintenance of levees.
3. Ecosystem restoration and the continued health of species throughout the Delta.
4. Sustained Delta communities and economy—including agriculture and recreation.
5. Protection of hard-fought and senior water rights.
6. Addressing local concerns as a threshold for approval of BDCP.

With these objectives as a base, we offer some specific comments about the legislation as revised. Since the pre-print versions of the Delta package, the bills have been amended twice. In both instances, provisions of concern for the Delta counties have been weakened or amended in direct conflict to Delta

county positions. We discuss below how the points in the letter from you dated September 22, 2009, have been amended since the pre-print bills were distributed.

1. The role of the Delta in the co-equals goals have been weakened. The co-equal goals now specify that only the two goals of ecosystem restoration and water supply reliability shall be the guiding principles for management of the Delta. Protecting and enhancing the Delta is now only to be a consideration as the state moves to meet the co-equal goals.
2. Amendments to the conservancy language also have moved considerably further from our stated Delta position. Specifically:
 - a. The mission has been altered so the conservancy is no longer charged with balancing ecosystem restoration and economic sustainability of the region. The mission and duties of the Conservancy have moved toward the exporter view point, i.e. the balancing language for ecosystem restoration and socio-economic well being has been amended and fee title authority has been allowed.
 - b. The prohibition on fee title ownership has been removed and no other protections for counties have been provided in place of the fee title provision. We are concerned about irresponsible landowners and feel there is a need for good neighbor policies. We have long experience with public agencies as landowners without sufficient management capacity – if the Conservancy is to be a landowner, specific, material provisions must be made for management and operation prior to acquisition, and the Conservancy should develop good neighbor policies. In Section 32364.5, grant applicants must satisfy a number of requirements prior to receiving a grant for acquisition; the Conservancy itself should also meet those standards.
 - c. The Conservancy language includes a prohibition on Bay Delta Conservation Plan funding going to Delta Counties. That means that the economic impacts of the BDCP will be paid for by a General Obligation Bond or borne by the counties (See pg. 28 of SB 68, "Funds provided to the conservancy to implement the Bay Delta Conservation Plan shall not be used for economic sustainability projects."). This could mean, among other things, that a multi-benefit project, such as one that provides habitat, flood control, and wildlife-friendly agriculture would not be eligible for funding. This could also mean that, for example, mitigation funds from the BDCP could not be used to implement local projects such as agricultural conservation.
3. The Delta Protection Commission's (DPC) standing has been diminished in regard to its relationship with the Delta Stewardship Council (DSC). Now, the DSC will have the discretion to decide whether to accept comments of the DPC. Previously, comments would have been accepted. Increased oversight of the DPC by the Council is onerous and problematic, especially in light of the glaring absence of similar oversight of SWP, BDCP and state agencies.
4. Standards for review of new conveyance have been weakened and/or removed. Specifically, previous language specified that the legislature was not pre-authorizing a new conveyance facility. It also specified that the Council, not DWR, had the sole authority to approve a conveyance facility. In addition, previous language required legally enforceable flows for protection of the Delta PRIOR to approval of a conveyance facility. These requirements have been removed. In addition, new intent language implies that the legislature intends to improve water supply reliability through new conveyance. This is in direct conflict to previous agreements regarding no preauthorization.
5. The bill provides for mitigation and in lieu taxes for lands used for conveyance; this provision should also be required for ecosystem lands in accordance with the commitments in your letter to us. Language must explicitly require mitigation for both direct and indirect impacts.
6. The Financing language is still very vague and lacks strong requirements for analysis and funding of mitigation of economic impacts on the Delta communities or for ongoing operation of the Conservancy, Delta Protection Commission, or the Stewardship Council. Your letter states your

commitment that the package will contain a “statutory requirement that BDCP include...compensation for Delta Counties...Mitigation for direct impacts to Delta communities.” This commitment is not met in the existing Delta package. Further, prohibiting BDCP funding from being allocated to Delta sustainability projects blocks the best way to actually deliver on this promise.

- Most of the financing promised to the counties will be contingent on controversial, highly vulnerable General Obligation Bonds. These bonds are likely to face significantly funded opposition when they appear on the ballot.
- No protections are provided to the Counties in the event that the bonds do not pass, the BDCP continues, and no other reliable financing emerges.
- Commitments to provide BDCP funding directly conflicts with language within the conservancy division that explicitly prohibits BDCP funding being allocated to Delta sustainability projects within the Delta counties. This is contrary to our position, which is that the BDCP and the Delta Plan should provide mechanisms to: ensure compensation for Delta Counties to mitigate for direct impacts to Delta communities, ensure payment of in lieu tax payments for land restored to habitat, and; ensure that projects not move forward unless these remunerations are guaranteed.
- Fees focused on upstream and in-Delta diversions, unrelated to specific impacts of an individual diversion, would result in a significant economic impact to our region.

7. In addition, there is new language in SB 68 that raises new concerns. Specifically:

- There is new intent language stating legislative intent to carry out new conveyance as part of water supply reliability. This seems to confirm that the legislature is delegating authority to approve conveyance to the BDCP.
- Section 85004 states that the economic well-being of the state is dependent on Delta exports. This is important because the legislation also directs the Council to sustain the economic vitality of the State. This language implies that water exports hold the highest priority in management of the Delta. Along with the weakened co-equal goals language, this language puts the economic well-being of the Delta region at risk.
- The new language limits oversight on the BDCP, while significantly tying the hands of local communities. The new language requires that all state and local actions must be consistent with the Delta Plan, which will include the BDCP. As written, the definition of covered actions and requirements for consistency with the Delta Plan will result in a new, onerous regulatory regime for all county and city decisions within the Delta, including flood, safety, port activity, land-use planning and development. Every action will be subject to consistency review by the Council. Because the BDCP will be a part of the Delta Plan, the consistency determination process requires Delta communities to conform all local actions to the BDCP - a process that benefits the exporters, not the communities within the Delta. “Covered actions” should not include land use planning activities carried out by local public agencies and/or activities carried out under the auspices of the Delta Protection Commission.
- In fact, all projects within the Delta - including any water transfer, levee project, water intake, discharge, or even restoration projects - by any local government - will be subject to review of the Council and to a determination as to whether it is consistent with the Delta Plan and the SWP-CVP's plan (BDCP). All other users of water and resources in the Delta will be subordinate to the need of the exporters and the BDCP. “Covered actions” should not include routine maintenance and operation of facilities located within the boundaries of the Delta or Suisun Marsh owned and/or operated by local public agencies.

8. **Water Rights:** A vast number of water users within the Delta beneficially use water pursuant to riparian and/or overlying rights, which are among the most senior of water rights in the state, and are duly protected from the Projects' export operations which are based on junior appropriative water rights. The Watershed Protection Act (Wat. Code, § 11460, et seq.) and the Delta Protection Act (Wat. Code, § 12200, et seq.) impose fundamental limitations on the State Water Project and federal Central Valley Project's ("Projects") ability to transfer "surplus" water from the Delta watershed to water-deficient areas to the south and west of the Delta. These acts contain the core protections and long-standing assurances including the Delta "common pool doctrine," which the Legislature afforded such water users when the Projects were initially authorized that the Projects will indeed be limited to the transfer of water that is truly surplus to their needs.

Situated within the Delta watershed, and with a substantial portion of lands within the boundaries of the "legal Delta" (see Wat. Code, § 12220), Delta Counties must rely on the proper interpretation of these acts is of paramount importance to all in-Delta water users, both human and environmental, that depend on water from that watershed. In addition, those portions of the Delta Counties lying upstream of the legal Delta use senior water rights and have reached other agreements between water supplies and the environmental concerns by negotiating the landmark Water Forum Agreement, the North Delta Water Agency / DWR Agreement & MOU and other agreements. The bill package would challenge the hard-fought protections afforded to the Delta and area of origin and priority users in the Delta Counties. This would be an unacceptable involuntary and uncompensated reallocation of local water supplies and rights.

These specific comments along with the Coalition's eleven adopted principles set forth below form the basis for sitting down with you to discuss the future of the Delta. We look forward to meeting with you so that we may craft a long term solution which will be acceptable to all and beneficial to everyone.

Delta County Coalition 11 Principles

The COUNTIES of Contra Costa, Sacramento, San Joaquin, Solano and Yolo have each adopted these Principles that describe their joint interests on the Sacramento-San Joaquin River Delta and Greater Bay Delta Estuary. The Delta Counties Coalition, a consortium of these five COUNTIES, is working together to give one voice to the Delta, advocating on behalf of local government and the 4 million people in the Delta.

The Delta Counties Coalition believes that the management of the Sacramento-San Joaquin River Delta and greater Bay Delta Estuary must:

1. Protect and improve water quality and water quantity in the Delta region and maintain appropriate Delta outflow for a healthy estuary;
2. Protect the existing water right priority system and legislative protections established for the Delta;
3. Respect and safeguard Delta Counties' responsibilities related to land use, water resources, flood management, tax revenues, public health and safety, economic development, agricultural stability, recreation, and environmental protection in any new Delta governance structures;
4. Represent and include local government in any new governance structures for the Delta;
5. Protect the economic viability of agriculture and the ongoing vitality of communities in the Delta;
6. Support rehabilitation, improvement and maintenance of levees throughout the Delta;

7. Support the Delta pool concept; in which the common resource provides quality freshwater supply to all delta users, requiring mutual responsibility to maintain, restore and protect the common resource;
8. Support immediate improvements to through-Delta conveyance;
9. Require that any water conveyance plan for the Delta be aligned with the principles established by this resolution and supported by clearly demonstrated improvement to the entire state's water management;
10. Protect and restore the Delta ecosystem, including adequate water supply and quality to support it in perpetuity; and
11. Include the study of storage options and implementation of conservation, recycling, re-use, and regional self sufficiency as part of a state-wide improved flood management and water supply system.

These objectives along with our eleven adopted principles from the Delta Counties (included above), form the basis for sitting down with you to discuss the future of the Delta. We look forward to meeting with you so that we may craft a long term solution which will be acceptable to all and beneficial to everyone.

Again, we want to express our deep appreciation to you for your willingness to consider our views. We are especially pleased that you count yourself as a Delta legislator. Darrell, all five of us seriously look forward to meeting with you to clearly and unambiguously set forth our issues and reach an agreement.

Sincerely,



Susan A. Bonilla
Chair, Contra County Board of Supervisors



Michael J. Reagan
Member, Solano County Board of Supervisors



Don Nottoli
Member, Sacramento County Board of Supervisors



Mike McGowan
Chair, Yolo County Board of Supervisors



Larry Ruhstaller
Member, San Joaquin County Board of Supervisors

CC: Members of the Legislature
The Honorable Arnold Schwarzenegger, Governor of the State of California