980 NINTH STREET, SUITE 1500
SACRAMENTO, CALIFORNIA 95814
WWW.DELTACOUNCIL.CA.GOV
(916) 445-5511

DELTA STEWARDSHIP COUNCIL

November 15, 2010

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Mr. Byron M. Buck, Executive Officer
State & Federal Contractors Water Agency
1121 L Street, Suite 802
Sacramento, CA 95814

Dear ~~Mr. Buck~~ Byron:

Thank you for the recent undated letter from the State and Federal Contractors Water Agency (SFCWA) to the Council regarding the September ARCADIS report to the Council. You followed up with a letter on November 2 which addresses some of the same points. I am writing to clarify a few key issues that you raise in those letters. Please note that I am focusing on the larger issues you raised, not each detail mentioned in the letters. In virtually every case, I refer you to the Delta Reform Act itself which is far clearer than you may wish with regard to the Council's role and the Delta Plan.

The Council's Role With Regard to the BDCP

The SFCWA states on the first page of its cover letter that "the emphasis on an assessment of and the resulting comments related to the BDCP steering committee process seems to imply a role for the Council that is much more intrusive than that authorized by the Delta Reform Act (Act)." That statement overlooks the robust role of the Council under the Act.

Under Water Code section 85320 (a), (d) and (e); the Council has a duty to consider, on appeal from a Department of Fish and Game determination, of the BDCP, whether the BDCP is appropriate for incorporation into the Delta Plan. This decision is based on whether the BDCP meets all criteria contained in Water Code section 85320(b). These criteria include whether the BDCP "complies with" all requirements of the Natural Communities Conservation Planning Act (NCCPA) and CEQA, and includes a "comprehensive review and analysis" of multiple components, such as "a reasonable range of flow criteria, rates of diversion, and other operational criteria required to satisfy the criteria for approval of a natural community conservation plan" and "a reasonable range of Delta conveyance alternatives." (Water Code § 85320(b) (1) and (b) (2).

In addition to questions surrounding the Council's appellate role, the statute designates the Council as a responsible agency, Water Code section 85320 (c). It also expressly mandates that the Department of Water Resources consult with the Council "during the development of the BDCP." Moreover, Water Code § 85320 (d) requires the Council to hold a hearing before it can incorporate the BDCP into the Delta Plan.

All in all, the Council's role with regard to BDCP is robust. I gather you have a different view but the statutory language is clear.

BDCP Compliance with the Act's Co-Equal Goals

The SFCWA letter (on page 3) also takes issue with ARCADIS' conclusion that the BDCP currently does not "appear to consider alternatives that will reduce current levels of reliance on the Delta for water export."

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– CA Water Code §85054

Although you raise legal arguments about the precise meaning of the statute, your implication is clear: you do not believe the BDCP is subject to the coequal goals, and the eight policy objectives outlined in SB 7X 1, and signed into law by Governor Schwarzenegger. Thus, your insistence that the language in Water Code § 85021"The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a strategy of investing in improved regional supplies, conservation and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts." does not apply to current water supply needs.

SFCWA's argues that the legislative policy requiring reduced reliance on Delta diversions is inapplicable to the BDCP because it is directed only to *future*, not current, water supply needs. This argument is based on a misunderstanding of the intent and purpose of Water Code § 85021 and the Act as a whole.

The term "future water supply needs" does not just refer to "the increment of increased demands due to population or other growth," as the SFCWA claims (see SFCWA Letter to Council, Oct. 18, 2010).

It is our strong opinion that the phrase includes all current water supply needs *as these needs will continue into the future*. It is impossible to imagine that the broad policy goals of the legislation could be met in any way if Delta exports are not part of the discussion. The sentence under discussion talks about conservation and water use efficiency. Surely that refers to current practices, not "the increment of increased demands due to population or other growth."

Our interpretation is consistent with the overall goals and policies of the Act, which make plain the Legislature's intent to reform *current* unsustainable water uses in the Delta and to protect and restore the Delta ecosystem. For example, the Legislature declared that "[t]he Sacramento-San Joaquin Delta watershed and California's water infrastructure are in crisis and *existing* Delta policies are not sustainable. Resolving the crisis requires fundamental reorganization of the state's management of Delta watershed resources." (Water Code § 85000(a), emphasis added.)

This also comports with the operational reality of having to adapt our current system to a changing climate, the effects of which we are already beginning to experience. For instance, we are already experiencing declining snowpack and the scientific community tells us that climate change models consistently predict a system yield that is likely to significantly decline in the future. Prudent and resilient management must seek to redesign the system in ways that allow for the probability of reduced exports and reduced water available for the ecosystem. It is clear however that the legislature expects our water supply system, and the economy that relies upon it, to be more resilient and <u>less reliant</u> on the Delta. None of those decisions will be easy, but to assert that your clients must automatically receive all the water they currently receive, plus whatever amounts they have reserved for possible future use, regardless of supply, regardless of statewide needs, and regardless of its impacts on the Delta ecosystem (the other coequal goal) is obviously not the intent of the law.

SFCWA Comments Regarding Funding Mechanisms for BDCP

The SFCWA questions ARCADIS' assertion that the BDCP does not currently provide funding assurances as required by the federal habitat conservation planning (HCP) process and the NCCPA. Actually, if the BDCP funding mechanisms are not developed until after the draft BDCP EIR is released; such an approach would be contrary to the federal Endangered Species Act (ESA), the NCCPA, and CEQA. Appropriate funding mechanisms for the BDCP are an essential foundational requirement for its approval as an HCP/NCCP under the federal ESA and the NCCPA, --- not an afterthought.

Miscellaneous SFCWA Comments

Finally, while I agree that it would have been more accurate for the ARCADIS report to qualify that some of its statements referring to unspecified "stakeholders" were referring to "some" rather than "all" BDCP stakeholders, this qualification was clear from the context. In order to avoid any subsequent misunderstandings, however, the Council will direct ARCADIS to make clear in its future reports to the Council whether it is referring to all or only to certain BDCP stakeholders.

Promoting Statewide Water Conservation and Water Use Efficiency and Sustainable Use of Water

In your letter of November 2, you assert that "it is appropriate for the Council's Plan to support this statewide policy by offering technical assistance and encouraging funding and incentives to increase regional water management, it is beyond the Council's mandate to insert itself into what must ultimately remain local water management agency decisions as they work to apply the policy articulated in Water Code § 85021..." The law clearly states in Water Code § 85303 "The Delta Plan shall promote statewide water conservation, water use efficiency, and sustainable use of water."

There is no statutory language that limits the Council to providing only technical advice. . In fact, Water Code § 85308 states "The Delta Plan shall...include quantified or otherwise measurable targets associated with achieving the objectives of the Delta Plan."

It is impossible to develop performance measures without standards to measure performance. The legislature, after long battles, adopted a major urban water conservation plan in 2009. It is useful to remember this provision from the Delta Reform Act of 2009:

"Water Code § 85023. The longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta"

I would expect that the Council would directly seek to prohibit waste or unreasonable use of water, particularly if it occurs in a way which hinders achieving the co-equal goals. It is my intent to recommend to the Council a finding be included in the Delta Plan that failure to implement appropriate water use efficiency and conservation measures should be defined as waste and unreasonable use.

It is always easier to delay hard decisions. The water bill package of 2009 made it clear that delay is no longer an option.

Once again, I thank SFCWA for its input and I hope that this letter clarifies my view of the issues you have raised.

Sincerely,

P. Joseph Grindstaff
Executive Officer