

From: Thomas Busse
To: [commentletters](#)
Subject: Letter – 2016 Bay-Delta Plan Amendment & SED
Date: Wednesday, November 23, 2016 2:21:53 AM



Dear Sir or Madam:

In response to your request for public comment on the 2016 Bay-Delta Plan Amendment and SED:

My comments relate to Mission and Governance. The current State Water Resources Control Board is underneath the California Environmental Protection Agency. The mission of the State Water Resources Control board, created in 1967, is to conserve, enhance, and restore the quality of the State's water resources and ensure their proper allocation and efficient use for the benefit of present and future generations.

Focusing on the word generations, we mean generations of people. Focusing on the term "water resources," they are just that: *water resources*. They are not environmental resources. They are not ecological resources. They are not estuarine processes or habitats, except as far as supporting certain estuarine processes enhances the water resources. As the creation of government of the people, the Environmental Protection Agency protects the *people's* environment; that is, the environment in which Californians live and experience this life. It is necessary to conserve this human environment so future generations *of people* can also do so in a way that is sustainable. At times, the Bay Delta Plan Amendments beg the question whether restoration of estuarine habitat or processes or favoring native species actually restores water quality; after all, supporting certain estuarine processes fails to enhance water resources. Capital improvements, are after all, improvements.

Although the Bay-Delta Plan Amendments expend considerable energy on fish populations, I could find no significant mention of vector control in the plan and the dynamic impact of reduced pumping. It does not take a skilled scientist to recognize the current level of pumping in the Delta considerably reduces still water and mosquito populations. Such large-scale habitat disruption as the Bay Delta Plan will require considerable effort among vector-control special districts and a reconsideration of their governance structure. California's State Legislative Analysts' office has noted a considerable deficiency among local agency formation, reformation, and tax allocation, especially in regard to the AB-8 property tax allocation formula. Simply put: local vector abatement agencies revenue allocations are frozen in the mid 1970's when delta water resources were developed in ways to reduce mosquito populations. If the delta changes, mosquito abatement districts must too change. Adoption of a Plan without a Plan for this is not planning. Blind pseudo-scientific restoration of the Delta is a romanticized fiction if we consider its pre-human condition as an uninhabitable mosquito-infested swamp.

This very uninhabitability explains the paucity of significant Pre-Columbian anthropological evidence of Delta use, and habitation was limited to a few villages of fewer than 1000 people in the higher ground to the East of the Delta. Reed harvesting certainly occurred, however, early Spanish diarists emphasized the inclusion of Acorns, and these would have been gathered a significant distance from the Delta. The current level of Tribal consultation in the Bay Delta Plan under the Governor's Executive Order B-10-11 is excessive. Why is the state's governor ordering consultation with the Tribes when the federal government retains this as its

exclusive authority (USC Article 1, Sec. 8)? Intangible claims of "sacredness" have not been verified or questioned by an outside scientific researcher and should be taken with a grain of salt in light of the considerable financial and other concessions that could result from a Tribal "consultation" process, which is really proxy for resolving questions in an age of overabundant judicial standing. Unfortunately, anthropological records and preservation of the folklore of California Tribes was not made by Spanish in the Spanish Reductions, but folkloric studies throughout the Americas, and indeed of pre-historic cultures everywhere, consistently point to swamps as places dominated by evil, malevolent, and vengeful spirits, probably as a wise and useful caution to stay away. Some natives retreated into the Delta in the age of Spanish settlement, only to fall under a malaria epidemic in the 1820s. Estuarine marsh was hardly ideal by Tribal standards in pre-Columbian times, and the very first creation of a mosquito abatement district anywhere in the world dates to 1904 on the San Pablo Bay.

In San Pablo's case, significant restoration projects since the creation of the San Pablo Bay National Wildlife Refuge have led to friction with the local Mosquito Abatement Districts. The settlement reached involved the creation of artificial channels to reduce still water. Stepping back this is "restoration" to something that never was! Nor should it be given the precedence of conservation and enhancement before restoration in the Water Resources Control Board's mission. Call it command ecology.

And therein lies the problem of planning bias. The plan makes no effort to isolate scientists who measure objectives (e.g. number of fish) from formulating those objectives (e.g. number of fish there should be), gaining from those objectives (e.g. getting grants or employment to measure fish) and involvement in activities that can change the personal benefit (e.g. overseeing construction of fish habitats that may or may not yield enough fish to require more construction). The very process of rendering a "Biological opinion" about an endangered species creates researcher bias in favor of opinions that create more work for researchers and their students as well as the processes that allow them to perform this work. The researcher who identified *h. transpacificus* as genetically speciated, Eric Taylor, is Chair of Canada's Committee on the Status of Endangered Wildlife (created by the Species at Risk Act). That is to say, he is a personal stakeholder in the maintenance of the existing North American system that defines speciation assessment and designable units. Any of his research is going to find new species because that is what pays his bills. He studied under the late Donald Evan McAllister who was both the editor-in-chief of the academic journal "Biodiversity" (which, surprise, tends to find things more diverse more often than not) and who "discovered" *h. transpacificus* in the first place. This process is peer review ... of cronies. It has not undergone replication, it is vulnerable to p-hacking, and the Canadian nationality of the researchers is a way to avoid independence requirements of the US or California's Endangered Species Act's biological opinion rendering process and would be invalid if they worked for American universities. *H. transpacificus* is the minnow equivalent of a redhead: kill all the gingers, and humans still walk the earth.

The Bay-Delta plan does not consider the purposeful introduction of the mosquitofish, which may be an unconsidered locally favored alternative in light of climate change in the next 20 years. Climate change and delta saline intrusion will likely extend the range of the *aedes aegypti* mosquito, which returned to the San Pablo bay after the restoration of the national wildlife area and is an immediate human environmental concern due to the emergence of the zika virus, ongoing west-nile virus challenges, planned population expansion of many central valley communities, and uncertain land use planning after the acquisition of five Delta Islands by the Metropolitan Water District.

Regarding Chinook Salmon among other things, the Bay Delta Plan does not consider the big picture; hence, I assert the Delta Plan needs to be integrated in an overall conservation plan that hasn't defined ecosystem or environment arbitrarily to meet current convenient objectives. The Klamath, Smith, and Eel rivers have been designated as wild and scenic; that is, we are conserving them for salmon runs; and, in the case of the Eel, particular tribal importance; in exchange, the Sacramento and San Joaquin systems have been designated for water resource development at a cost of diminishing support for certain estuarine processes. In fact, the State Water Project has already voluntarily not developed its entitlements to these north coast river systems and asking for further voluntary concessions is not considered in this sacrifice. Is not this "big picture" view of compromise and trade offs sufficient? Humans can have sex: just not on the Eel, Salmon can have sex, just not very well on the San Joaquin. This is a decision that was made when the Water Resources were developed and entitlements allocated.

The Bay-Delta Plan makes no mention of the potential for interbasin transfers and capital projects as a means to increase flow. Furthermore, given the cost of voluntary flow reductions by certain agencies, does it not make more sense to direct development where entitlement pressures are lessened. For example, demanding greater housing density in the SFPUC's south SF Bay wholesale area where there is an efficient use of state water resources (remember your mission) and adequate storage capacity could be coupled with a moratorium of development in the area served by the Contra Costa canal?

Maintaining free navigation in the Delta is a continued condition of statehood per the 1850 Admission of California to the Union Act, which is still Federal law. If California's Bay-Delta plan significantly limited the navigation of the delta's waters in the name of conservation, *California could revert to federal territory status* (volume 9, Statutes at Large, Page 452) [same thing if the state tried to introduce slavery]. Although this comment may seem fanciful, the United States 1850 was in negotiation with Denmark over the Baltic Sound dues and maintaining free perpetual navigation was a particular concern of Congress at the time, as it was a potential bottleneck to approach the terminus of the Transcontinental Railroad Survey authorized by Congress in 1847.

I digress this far into federalism to question why the State is formulating a Delta Plan at all, given that the entire delta is subject to the doctrine of federal servitude (*Phillips Petrol v. Mississippi* 484 US 469, 480 (1988)). The federal government can, at any time, impose its authority on the delta, to the point of draining or rerouting the entire waterway. Federal Judges are already ripping up parts of the existing Delta Plans. As a California Taxpayer, I have significant concern with my income going toward this pseudo-scientific environment regulatory charade to appease a regulatory house of cards so it can go forward with the unstated nefarious purpose of keeping the status quo, chipping away at the seniority system of water rights, and building some variant of the peripheral canal. If you want to build it, just build it. I support you. We need to construct adequate infrastructure to impound and convey our water resources in a way that efficiently meets the state's ever-expanding population. The alternative is human population controls - another hallmark of command ecology. Don't pay off narrow-minded environmentalists and their EIR-creeping army of fanatic quasi scientific experts who adhere to a myopic definition of ecosystem and perennial vexatious litigation of dubious standing. Fix the system by starting with yourselves.

As I said, there's a governance problem.

Respectfully,

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