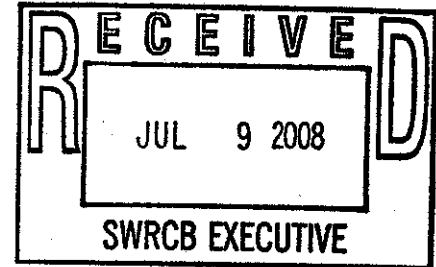




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July 9, 2008

Tam Doduc, Chair  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812



Subject: Draft Strategic Workplan for Activities in the  
San Francisco Bay/Sacramento-San Joaquin Delta Estuary

Dear Chair Doduc:

The Santa Clara Valley Water District (District) is pleased to provide comment on the subject document. We commend the State Water Resources Control Board (Board) and Board staff for this comprehensive workplan and look forward to participating in its refinement and being involved in the various activities outlined within it.

The District is the primary wholesale water supply agency for Santa Clara County, serving 1.7 million residents and the vital high-tech economy of "Silicon Valley" in Santa Clara County. On average, half of the County's annual water supply is imported from the Bay-Delta watershed through the State Water Project (SWP) and the federal Central Valley Project (CVP). The District's Integrated Water Management Plan includes substantial local investments in water use efficiency, recycled water, and groundwater management. However, ensuring the reliability of the county's water supply depends on protecting and restoring the Delta as the hub of the state's major water projects. Consequently, the District maintains a high level of engagement with respect to Bay-Delta processes and is particularly interested in the Board's proposed Bay-Delta related activities and initiatives as outlined in the workplan.

The District endorses the purpose of the workplan as stated in the Notice of Availability, "to ensure the comprehensive and coordinated protection of beneficial uses in the Bay-Delta, and the equitable administration of water rights." We are particularly supportive of comprehensive coordination among the various other processes underway related to the Delta (Bay Delta Conservation Plan (BDCP), Delta Vision, etc.) which are already demanding significant commitments of staff time and financial resources. Consequently, we will be particularly sensitive, as implementation of the plan moves forward, to activities that could become duplicative and/or which do not build on existing efforts without a definitive and broadly accepted rationale.

Today though, we are very pleased that throughout the document, Delta Vision and BDCP are referenced as processes with which workplan activities will be coordinated and built upon. In addition, the introduction states that it is the Board's desire to "not disrupt stakeholder processes." We appreciate the Board's understanding that initiating a new Bay Delta Water

Quality Control Plan process prior to completion of Delta Vision and the BDCP would in fact be disruptive to ongoing stakeholder processes.

Considering the Board's repeatedly mentioned inadequate staffing levels, we are concerned that there are major initiatives in the workplan that, while interesting and of some benefit no doubt, will consume your limited resources quickly and divert effort from higher priority needs. In addition, the studies and processes proposed in the workplan will involve hundreds of hours of Board hearings and many tens of millions of dollars for supporting analyses and studies – with similar demands on stakeholder staff resources. Although the various schedules provided indicate limited overlap, we believe history, and the complexity of the issues involved, would suggest the timelines and staffing expectations are overly optimistic.

The District generally supports those components of the proposed workplan not called out specifically below (e.g. pesticide monitoring, etc.).

#### INTRODUCTION

Page 11, top: There is a statement that the Board's water quality activities have as a primary goal addressing "water quality impairments that may have a nexus with species declines...and water supply impacts." We encourage you to add "drinking and source water quality" as another beneficial use with an important nexus to water quality impairments.

Page 12, full paragraph two: the reference to the US District Court seems incongruous and out of place. We recommend striking that clause, and instead suggest a period after the word "declines".

Page 14, top: a statement is made that if the BDCP is not "satisfactory" then the Board may immediately undertake a water right proceeding. We assume that while the BDCP is moving forward, Board staff participating in the process will contribute to ensuring a "satisfactory" outcome and raise concerns when necessary so we don't get to the end and "if only" becomes a Board critique.

Page 22, middle: Board staff will provide quarterly updates on the implementation of the workplan. We encourage the Board to notify stakeholders when those updates are available and make them accessible via the web.

#### BACKGROUND

Page 23, paragraph 3: The document asserts that water from the Delta "supports about \$400 billion dollars of the State's \$1.5 trillion dollar economy." How was the \$400 billion figure developed? Considering over 2/3 of the state's population, the agricultural sector, Silicon Valley, Hollywood, etc. are all heavily reliant on water conveyed through or diverted upstream of the Delta, the number seems small. Also, it is wrong to say the water is "from the Delta" when it is primarily captured snowmelt that is ultimately conveyed through the Delta.

### ONCE-THROUGH COOLING

We ask the Board to ensure that activities related to addressing "once-through cooling" impacts at power plants do not become additional obstacles to co-location of potential desalination facilities.

Page 43, bottom: The document makes a statement that Delta power plants have reduced their operations and currently operate primarily during the summer when fishery concerns are reduced. The summer reduction in fishery concerns is relevant for other locations in the Delta, but the two Delta power plants are located in prime summer nursery habitat for delta smelt and other fish species. Summer is exactly when fishery concerns in this area are likely to be highest.

### SEDIMENT QUALITY OBJECTIVES FOR ENCLOSED BAYS AND ESTUARIES

Page 46, bottom: From a resource allocation standpoint, we are concerned about this effort, notwithstanding the court mandate. The document itself states that "*Few states have attempted to develop SQOs because of the lack of ecologically relevant tools, difficulties interpreting and integrating the results, and an inability to establish causality.*" This does not inspire confidence. The discussion should elucidate how the information gleaned in this effort and the resulting objectives might impact water management in and affecting the Delta.

### INVASIVE SPECIES

Page 48: The District strongly supports the Board making invasive species a major focus of attention. The District has formally supported legislative measures seeking to better regulate ballast water discharge and we appreciate the Board staff engaging on the USEPA NPDES permit development process.

Page 49: The workplan identifies coordination with other State regulatory agencies, including participation on the California Agencies Aquatic Invasive Species Team, as a major activity. We would appreciate more discussion of the activities these agencies are engaged in to help us better understand specific actions that may be considered to accomplish outcomes contemplated by this workplan component.

### CHARACTERIZE DISCHARGES FROM DELTA ISLANDS

Page 51: While we support the proposed monitoring program, the workplan should go a step further and add to its objectives and timeline the development and implementation of a remediation and enforcement program based upon the data developed through the monitoring program. We also urge the Board to explicitly state development of the program will engage the broad stakeholder community through an open process.

**EFFECTS OF AMBIENT AMMONIA CONCENTRATIONS ON DELTA SMELT SURVIVAL AND ALGAL PRIMARY PRODUCTION**

Page 52-53: The District appreciates the workplan's attention to the ammonia issue; however, we are at a loss as to why more study and study alone is the focus. The document states that *"delta smelt may be particularly sensitive to ammonia and that ammonia may limit primary productivity in the Delta."* Furthermore, ammonia *"is toxic to fish, with salmonid species being most sensitive."* Certainly developing better understanding is worth pursuing, but there should be no delay in the Board taking action to address those facilities contributing ammonia into the Bay Delta system. Effective technologies exist to ameliorate the ammonia problem and should be ordered put in place immediately.

Page 54, middle: The paragraph discussing primary algal production includes a statement that delta smelt and primary production screening studies may be conclusive and require no further follow-up. As the plan states, we already know current ammonia levels impact primary production in Suisun Bay. Suisun Bay is important rearing habitat for many species. Follow-up studies that lead to reductions in ammonia loading in that area are already justified. In addition, the currently proposed Delta smelt survival studies are a good first step in trying to understand the potential effects of ammonia on Delta smelt survival, but they fall far short of capturing the potential spatial and seasonal variability in ammonia effects or of capturing the range of potential chronic or synergistic effects of ammonia on the ecosystem. A similar worrisome statement about screening studies being conclusive is made in the selenium section (page 56, middle), and should also be revised.

**SOUTHERN DELTA SALINITY AND SAN JOAQUIN RIVER FLOW OBJECTIVES**

In its January 8, 2007 Comments to the SWRCB Regarding Information on the Southern Delta Agricultural Salinity Objectives, DWR made the point, supported by modeling analyses, that south Delta salinity conditions could not be controlled by existing operations of the SWP and CVP. Salinity in the southern Delta appears to be largely impacted by San Joaquin River flows and local discharges, including waste discharges and agricultural return flows.

We support the review of the basis for the southern Delta salinity objectives, including a review of the existing science regarding irrigation salinity needs. We believe that an important aspect of this review includes the definition of the extent of beneficial uses, including drinking water uses, protected by the southern Delta salinity objectives and the clear identification of the factors that control water quality in the area.

Concurrent with this effort, the Board should evaluate and confirm the asserted water rights of south Delta water users. This is important to ensure that the application of water quality objectives and the actions to achieve them are being implemented and imposed to protect beneficial uses for which there is an actual legal right of diversion, as opposed to merely an historical pattern of diversion.

Similarly, we support a parallel review of San Joaquin river flow objectives. We encourage the Board to coordinate their review of both south Delta salinity standards and San Joaquin River

flow objectives with the BDCP effort, which could likely significantly contribute to the development of both.

#### **SUISUN MARSH MANAGEMENT, PRESERVATION, AND RESTORATION**

We support the proposed effort to develop a comprehensive Suisun Marsh Plan and undertake a review of associated water quality objectives to protect beneficial uses. The beneficial uses of the marsh, the largest brackish marsh in California and a highly significant ecosystem, should be clearly defined, as should the water quality objectives to protect those uses. We have concerns at this time that water quality objectives and management activities in the marsh are not as focused on the broader ecosystem as they should be.

#### **COMPREHENSIVE REVIEW OF THE BAY-DELTA PLAN, WATER RIGHTS AND OTHER REQUIREMENTS TO PROTECT FISH AND WILDLIFE BENEFICIAL USES AND THE PUBLIC TRUST**

Page 73-74: The District supports the Board moving forward with this effort and the focus on the three stated scenarios -- interim, long-term with new conveyance and long-term without new conveyance -- with the understanding that hearings would not be initiated until such time as the BDCP EIR/EIS process is completed. We strongly support the explicit desire to coordinate closely with the BDCP and are confident *"the objectives of both the State Water Board and the BDCP could be achieved through the same environmental review process conducted as part of the BDCP... [ensuring] that the State Water Board's water quality control planning and implementation activities complement and do not interfere with efforts by BDCP."*

While the District is pleased with this expressed intent, it would be useful for the Board to provide more detail here as to the particulars that would be looked for in the BDCP process to meet the needs of the Board to maximize the complementary nature of the two processes. Alternatively, an indication or identification of analyses that if not done in the BDCP process would give the Board pause and could lead to an insufficient level of confidence to allow for the high level of "integration" contemplated would be instructive as well.

#### **WATER RIGHT COMPLIANCE, ENFORCEMENT, AND OTHER ACTIVITIES TO ENSURE ADEQUATE FLOWS TO MEET WATER QUALITY OBJECTIVES**

Page 80: Once again, the District is quite encouraged by the Board's identification of critical issues to address. We are particularly interested in the assessment and action *"to ensure that developed water supplies are not adversely affected by unauthorized diversions."* California is coming to the point (some believe we may have passed it already) where there simply will not be the water in the system to not get serious about enforcement of water rights. We applaud the workplan's statement of impetus for this component:

*"Increasing demands on water from the Bay-delta and its tributaries, the effects of climate change, and mounting environmental concerns have intensified the need for the State Water Board to vigorously enforce water right requirements to ensure that sufficient flows are available to meet water quality objectives and to*

*prevent DWR's, USBR's and other water right holders' developed water supplies from being adversely affected by unauthorized diversions."*

Page 82, middle: We endorse the Board's prioritization of this effort and agree the "first step" is to "investigate whether illegal diversions are occurring and take action" to stop them. We are very concerned; however, that six PYs dedicated to this undertaking is woefully inadequate considering the thousands of diversions in the Delta alone. We encourage the Board to dedicate significantly more resources to this foundational effort as there are significant implications for all of the other activities in the workplan if unauthorized diversions can be identified and halted.

### WATER USE EFFICIENCY

The District, as a statewide and national leader in water use efficiency, supports most of what is included in the workplan related to conservation and recycling. However, we are not convinced that the Bay-Delta Workplan is necessarily the appropriate place to go into such detail.

This section of the report is the longest of any in the entire document, only the discussion of Southern Delta Salinity is equivalent. While we certainly agree that "Water use efficiency...has a significant potential to assist the State in meeting its growing needs" and will in fact do so, as part of the Bay-Delta Workplan the discussion is out of place. In addition, the California Urban Water Conservation Council (CUWCC) process related to BMPs should be referenced and deferred to. Explaining how the Board's proposed activities would coordinate with that effort would be informative.

Moreover, with as many as six staff dedicated to these conservation efforts, the dearth of staffing directly related to Bay-Delta activities and particularly water rights enforcement remains especially troubling. California's most pressing water management problem is not that there isn't enough effort being expended to promote and achieve improved water use efficiency. Those activities are integral to water management throughout the state already, with significant attention being paid to how to improve performance further. The Board should keep its attention on what is in fact California's most pressing water management problem – the Delta.

While water use efficiency and recycling are undoubtedly critical elements of California's current and future water portfolio, there should be no misconception that we can conserve and recycle our way out of the reliance two-thirds of the state's population and millions of acres of the world's most productive agricultural sector have on Sierra water conveyed through the Delta, and the need to "fix" that problem.

The District realizes the Board must meet numerous challenges with limited resources, however, in the Bay-Delta Workplan, we believe the focus and the focused application of resources needs to be on activities directly related to resolving water quality and water rights problems in the Delta.

Page 84, top: The objectives state hard numbers for recycled water and conservation (980kaf and 20% per capita respectively). Yet, there is only an "encouraging" of more efficient agricultural use. While the District is a strong supporter of agriculture in our own County and in statewide policy discussions, we see no rationale for not moving toward higher expectations for agriculture. In many respects the costs and uncertainties associated with water are forcing ever greater conservation in the agricultural sector and farming improvements are resulting in less water producing greater yields. Nevertheless, BMPs for agriculture should be reassessed and improved and levels of application monitored, with incentives for doing so and disincentives for failure to do so.

Page 85, middle: The document states that "*Numeric objectives are being established for water recycling and urban water conservation....*" The District urges caution in that often numeric targets lead to expectations that can't be met realistically or do not account for differences in geography, climate, water portfolio, socio-economic differences, etc. This is particularly acute with respect to per capita assessments, which also do not always reflect already successful efforts to reduce consumption in some areas as compared to no or less activity elsewhere. The former is "penalized" by a per capita percentage reduction target. We believe implementation of water use efficiency best practices is what's important, with monitoring/reporting of performance at individual districts to track progress and improvement.

Page 85, middle: The workplan also asserts that "*Agricultural water use accounts for 79 percent of total water use in California, excluding environmental uses.*" This perpetuates a false picture of California's water balance considering those environmental "uses" represent close to half of the state's total water supply. We suggest it would be more appropriate and clear to simply state that "Agriculture uses approximately 79 percent of California's developed water supply."

Page 87, bottom: The idea of requiring 25 percent wastewater recycling by 2020 is laudable; however, there will need to be mechanisms to ensure that such supplies are somehow integrated into the local water purveyor's portfolio.

Page 89, top: The District does not accept the differentiation between export areas and non-export areas when it comes to promoting water recycling, and conservation initiatives shouldn't be limited to areas receiving water supplied from the Delta and its tributaries. Conservation should be a statewide water ethic, since it results in greater energy efficiency, thus reducing greenhouse gas emissions. Similarly, water recycling has benefits beyond just the export areas, e.g. Marin Municipal Water District isn't connected to the Delta but to its credit it is pursuing a recycling project.

Page 89, top: With respect to BMPs, while the District is supportive of encouraging better performance, we are not convinced mandatory regulation is the best approach. There's been significant, if not universal or uniform, implementation of the current BMPs throughout California. With your limited resources, the Board and the state would be better served by looking to the CUWCC to develop the next level BMPs rather than trying to squeeze the last marginal drops from the current ones through an adversarial process of regulation.

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Page 89, middle: The proposal to identify two areas or suppliers utilizing water from the Delta watershed to be the targets of "*adjudicative proceedings to determine the reasonableness of such use*" seems to us a potential battle that will take a lot of time and not advance the development of information that can be very useful. In the alternative, the District suggests an open and transparent process to develop parameters pertaining to the use of water, the method of use, method of diversion, location of use, etc. that could help the Board to better understand "reasonableness" and apply it in various contexts.

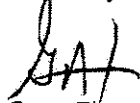
#### OTHER ACTIVITIES

##### SCREENING DIVERSIONS IN THE DELTA AND TRIBUTARIES

The District supports any efforts the Board can undertake to address unscreened diversions in the Delta and its tributaries.

The District appreciates the opportunity to provide comment on this important effort. If further information or clarification is desired, please do not hesitate to contact me.

Sincerely,



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