

April 23, 2013



Ms. Felicia Marcus, Chair  
Members of the Board  
State Water Resources Control Board  
1001 I Street  
Sacramento, California 95814

Re: Informational Item, State Board Meeting April 9, 2013:  
Current Status of Phase 2 of the Comprehensive Update  
of the Bay Delta Water Quality Control Plan

Dear Chair Marcus and Members of the Board:

The State Water Contractors ("SWC") appreciates this opportunity to provide input on next steps in the Bay Delta Water Quality Control Plan (Bay Delta Plan) Phase II process. The SWC participated in all of the Phase 2 technical workshops and State Water Resources Control Board ("State Board") meetings, including the informational meeting on April 9th.

The SWC are pleased that Dr. Peter Goodwin, Lead Scientist for the Delta Science Program, attended the April 9<sup>th</sup> State Board meeting, putting forth a proposal for the Independent Science Board ("ISB") to review areas of scientific uncertainty. The SWC understand the difficulty in putting forth a proposal, and appreciate the Delta Science Program doing so.

If the State Board were to accept the Delta Science Program's offer to assist, the SWC would recommend a process that is slightly different than those previously undertaken by the ISB. The SWC think it is important for the State Board members to maintain their existing active oversight role in reviewing the science, but the DSP procedures for independent reviews may make this difficult due to the physical and institutional separation between the ISB and the State Board members.

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The DSP's Procedures for Independent Scientific Review, October 26, 2011, ([http://deltacouncil.ca.gov/sites/default/files/documents/files/DSP\\_Review\\_Procedures\\_110712.pdf](http://deltacouncil.ca.gov/sites/default/files/documents/files/DSP_Review_Procedures_110712.pdf)) suggest a process where the requesting agency (*i.e.*, the State Board) has a limited role in the development of the panel's charge, selection of panel members, and the submission of information. There are also few opportunities for stakeholder input into the ISB process. Stakeholders and the general public are provided information about the issues the ISB panel is reviewing but have little opportunity to interact with the panelists, to ask questions, and to provide information. If the State Board were to engage the Delta Science Program and ISB, the SWC would recommend that the State Board members maintain active involvement in the ISB process, and ensure more transparency and public participation than is provided for in the usual ISB panel review procedure. Specifically, the State Board should ensure an opportunity for stakeholders to provide input in the development of the panel's charge, the selection of panel members, and should be provided an opportunity to interact with the panel and be permitted to submit information to the panel for review.

If the State Board were to engage the ISB, it is also important that the State Board set aside sufficient time for the ISB to rigorously review the scientific questions put before them. The ISB should be provided the time needed to review the data, methods, and assumptions applied, for example, in the underlying literature, and by stakeholders in their workshop submissions. There are a number of science summaries that have been completed in recent years on a variety of issues, so another science summary report would not be expected to further scientific understanding. To be meaningful, the ISB review would need to rigorously review the underlying scientific bases for the different hypotheses that attempt to explain aspects of the system, not simply report or summarize them.

In addition to an ISB review or similar science review process, the State Board should continue to gather information required for sound decision-making. For example, the SWC would encourage the State Board to request information about the Bay Delta Conservation Plan, the Delta Stewardship Council's Delta Plan, the OCAP Remand Science Program, and the Suisun Marsh Plan. The State Board would likely benefit from a comprehensive understanding of what is being undertaken in these various processes, and how they relate to the Bay Delta Plan. For example, in the BDCP there are numerous near-term actions that are being proposed. The implementation of these actions would begin immediately after the BDCP permits are issued. These actions are not hypothetical, as the environmental documentation and permits are already being drafted, and the financial investment in these projects by the state and federal water contactors has already been quite significant. At the April 9<sup>th</sup> State Board meeting, some of the State Board members were interested and encouraged by actions that could be implemented in the near-term. For this reason, the SWC wanted to highlight the fact that the BDCP is where the largest investment has been, and will continue to be, made in the Delta, and the SWC think the State Board would have great interest in its progress to date.

The State Board also requested public comment about the areas of scientific uncertainty that warrant further investigation. The SWC believe the Dr. Brock Bernstein report accurately captured the range of scientific uncertainty that extends through a large number of important scientific questions. However in order to determine which areas of uncertainty should be the focus of further scientific review, the State Board needs to, as an initial matter, ask and answer a key set of questions. As an initial matter, the State Board needs to determine what it wants to accomplish, as well as what it can accomplish from a technical perspective. To answer these questions, the State Board needs to consider: 1) what biological or ecological change(s) it wants to achieve (*i.e.*, what ecosystem processes or functions should be restored); 2.) how would restoring the identified biological or ecological function benefit targeted species, including an assessment of whether a change in species abundance is expected; and 3.) what is the full range of actions available that can restore, or contribute to restoration of those functions; 4.) how certain are we in the predicted outcome of each action alternative. Once the State Board has established a clear picture of its intended outcome and how the Bay Delta Plan review relates to other activities in development, the relevant areas of scientific uncertainty are more easily determined. Instead of trying to study the entire universe of issues, the State Board would be focused on those issues relevant to what is possible and most beneficial for species. Furthermore, the stakeholders could provide meaningful input regarding the methods for achieving the targeted outcomes. And, the ISB could provide meaningful input regarding the scientific strength of those findings.

At the April 9<sup>th</sup> State Board meeting, the Dr. Goodwin's staff proposed its four possible areas of scientific uncertainty for the ISB review. If the SWC recall correctly, those issues were: 1.) Delta outflow; 2.) through Delta flows; 3.) invasive species (*i.e.*, how invasive species have modified the system and what can be done to reverse or limit future invasions); and 4.) nutrients.<sup>1</sup> Given the current lack of clarity on desired outcomes described above, the SWC question whether these are the most important areas of uncertainty for this review of the Bay Delta Plan. The SWC understand why flows are on the list; having been the primary focus of the Bay Delta Plan proceedings thus far, but the State Board needs to answer the questions posed above before it can determine whether these four areas are the most relevant areas of uncertainty to resolve. Moreover, the issues of "outflow" or "through Delta flows" are very broad, so it is difficult to assess which specific issues within these broad categories of scientific uncertainty would be the focus of the proposed ISB review.

Invasive species are certainly an important issue, but so are predation and many other issues that did not make the list. The SWC included a discussion of those in our joint

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<sup>1</sup> Dr. Goodwin's staff may also have proposed adaptive management as one of the topics for review. If adaptive management is one of the proposed topics, the SWC refer the State Board to comments provided by San Luis Delta Mendota Water Authority (April 23, 2013) regarding adaptive management.

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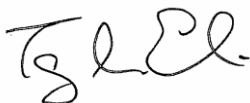
SWC-CVP submittal in the Ecosystem Change workshop (Workshop 1). The SWC are not aware of the invasive species studies being particularly controversial.

And finally, nutrients were included on the list of important issues for ISB review. While the SWC certainly agree that nutrients are important, we aren't sure that nutrients are one of the top four areas of uncertainty that the ISB should consider in the context of this review of the Bay-Delta Plan. Unless, the State Board will be considering a new nutrient standard as part of this Bay-Delta Plan review. However, there are a number of ongoing State Board and Regional Board processes that are already addressing the development of nutrient strategies and water quality objectives. The State Board is working on its statewide nutrient policy for inland surface waters, and the San Francisco and Central Valley Regional Water Boards are both working on nutrient strategies and objectives. As part of those processes, there will be independent science reviews. As those processes are on different schedules from State Board's consideration of new standards in the Bay Delta Plan, it seems premature to elevate nutrients for review by the ISB as part of this Bay Delta Plan update. However, the SWC would support the State Board accelerating those other processes.

The SWC have been, and will continue to be, actively involved in the nutrient issue in a number of forums. The SWC did include an extensive discussion of nutrients in its joint SWP-CVP submittal in the Ecosystem Change Workshop (Workshop 1). The SWC felt that was important to include because the State Board seemed to be asking a question in Workshop 1 that is larger than just the Bay Delta Plan update, being what is driving changes in the ecosystem. The SWC do believe that nutrient forms and ratios are driving some big changes in the ecosystem; and until nutrients are addressed at the Sacramento Regional Wastewater Treatment Plant, and elsewhere, the effect of nutrients will hinder the potential benefits of restoration actions. With the possible exception of understanding how nutrients might influence the perceived benefits of flow (*e.g.*, understanding whether nutrients or food availability are mechanisms underlying the longfin smelt abundance correlation with winter-spring outflow), it seems appropriate for the State Board to begin narrowing its review to issues that are directly relevant to this Bay Delta Plan review.

The SWC look forward to working with you, and your staff. If you have any questions, please feel free to contact me at (916) 447-7357 ext. 203.

Sincerely,

A handwritten signature in black ink, appearing to read 'Terry Erlewine', written in a cursive style.

Terry Erlewine  
General Manager