



January 18, 2012

Attention: Imported Water Committee

Draft Environmental Impact Report on Delta Plan. (Information)

Background

In 2009, the California Legislature passed a package of legislation relating to the Sacramento-San Joaquin River Delta that included a Delta Reform Act and a water bond. The Delta Reform Act established the Delta Stewardship Council as the successor to the CalFED program and gave it the task of preparing a Delta Plan. The Delta Plan was to have been completed by the end of 2011, however, it is now scheduled for completion in early 2012.

The DSC worked throughout 2011 and produced five drafts of the Delta Plan. The DSC released a draft Environmental Impact Report on November 4 for public comment. The comment period will end February 2, 2012.

Discussion

When a state agency promulgates regulations that may have an impact on the environment, the agency is required to produce an environmental analysis under the California Environmental Quality Act. The Delta Plan contains a set of regulatory policies, so the DSC is required to prepare an environmental impact report. However, the regulatory policies either require, or recommend that other agencies take certain actions, which would be in the discretion of the other agencies. The draft EIR deals with the speculative nature of the environmental impacts by describing possible projects or actions and assessing the potential impacts from those projects or actions. The Sixth Draft Delta Plan must also undergo a review by the Office of Administrative Law.

The draft EIR is based on the Fifth Staff Draft of the Delta Plan, which is referred to as the Proposed Project. The draft EIR also describes five alternatives to the Proposed Project, all of which it finds to be environmentally inferior to the Proposed Project.

The five alternatives include:

1. An alternative proposed by the state and federal water contractors to restore water exports to amounts that were prevalent before the Wanger decision in 2008;
2. Another alternative proposed by the ACWA Ag-Urban coalition that would also restore water exports and would require a phased approach to improving water supply reliability that would rely on continued scientific studies and adaptive management;
3. An environmentalist alternative that proposes decreasing exports to no more than 3 million acre feet per year and concentrating on ecosystem restoration throughout the state;
4. An alternative that places increased emphasis on protection and enhancement of Delta communities, culture, and agriculture, with less ecosystem restoration; and,
5. A no-project alternative.

The five alternatives are all rejected in the EIS in favor of the Proposed Project.

When it established the DSC, the Legislature charged the DSC with accomplishing the policy of the state to achieve the coequal goals of providing a more reliable water supply and protecting, restoring, and enhancing the Delta ecosystem, while protecting and enhancing the unique cultural, recreational, natural resource, and agricultural values of the Delta as a place. Proponents of the Delta package understood that the DSC would combine and coordinate the plans and planning activities of the more than 200 government agencies that have responsibilities in the Delta, and would set forth a blueprint for proceeding with infrastructure projects that will help the state achieve the coequal goals. The DSC would have appellate powers to ensure that actions covered by the Plan would be consistent with the Plan.

Instead, the Fifth Staff Draft of the Delta Plan concentrates on regulatory actions to ensure that exporters of Delta water reduce their reliance on the Delta. The DSC would require that local and regional water suppliers report on their efforts to reduce reliance on the Delta in their agricultural and urban water management plans. The DSC would also require that local and regional water suppliers adopt rate structures that encourage water conservation. Rather than fixing the Delta water supply system and restoring exports, the DSC would improve water supply reliability through increased local and regional self-sufficiency and reduced demand for water.

The Plan also emphasizes increasing flows of freshwater into and through the Delta, to provide environmental improvements for species of fish that are listed under the state and federal Endangered Species Acts. The Plan does not provide at all for the building of water infrastructure. Under the Delta Reform Act, the Bay-Delta Conservation Plan will be incorporated into the Delta Plan, when it is completed and *if* it qualifies as a Natural Communities Conservation Plan under state law. The BDCP is the document and planning process that will propose an infrastructure project and will provide permits for the projects under endangered species laws. The BDCP is scheduled to release a draft Plan and EIR in June 2012, with final approval scheduled for early 2013.

If the BDCP fails to qualify as an NCCP, the Delta Plan will have no provisions for infrastructure improvements and will largely rely on increased regional self-reliance and flow criteria. The Delta Plan also establishes a Delta Science Program and a system of adaptive management. The Draft EIR mainly examines the environmental impacts of these actions.

The Delta Plan establishes a series of policies, which are intended to have the force of regulatory law. The policies include the following:

- Water suppliers who receive water from the Delta must include a Water Reliability Element in their Urban Water Management Plan or Agricultural Water Management Plan. This element must be in place by December 31, 2015. The element must detail how water suppliers are sustaining and improving their regional self-reliance and reducing reliance on the Delta.
- Update Delta flow requirements. The Delta Plan requires the State Water Resources Control Board to adopt and implement updated flow objectives for the Delta by June 2014, and for tributaries to the Delta by June 2018. The flow objectives are intended to

control salinity in tidal waters and to provide fresh water conditions for spawning and migrating fish.

- All new water use from the Delta or transfers through the Delta for more than one year must be developed in a transparent manner consistent with Department of Water Resources and U.S. Bureau of Reclamation policies.
- Habitat restoration activities must be consistent with habitat type locations shown in an adopted Conservation Strategy.
- Actions other than habitat restoration activities must avoid or mitigate any loss of opportunity for habitat restoration.
- State and local agencies constructing new levees or substantially rehabilitating or reconstructing existing levees must incorporate alternatives that would increase the extent of floodplain and riparian habitats.
- Agencies proposing actions covered under the Delta Plan must show that they have fully considered whether their actions will cause the introduction of invasive species and shall prevent or mitigate any introduction of invasive species.
- Covered actions may not involve the unmitigated encroachment on floodways, floodplains, or potential future floodplain or bypass locations in the Delta.

The Delta Plan also includes a large number of recommendations, which do not have the force of law. The recommendations include timely completion of the BDCP. The Delta Plan makes recommendations for storage facilities upstream of the Delta. The Delta Plan does not directly provide for the construction of any water conveyance or storage infrastructure or institute a process to move toward construction. The draft EIR does not examine any environmental impacts construction would cause. That examination is left to the EIR for the BDCP.

In the final analysis, the Delta Plan relies almost entirely on regional self-reliance and the reduction of dependence on the Delta to achieve the coequal goal of water supply reliability. It primarily relies upon flow requirements to achieve the coequal goal of ecosystem restoration. ACWA and the state and federal water contractors have already commented that this plan and its attendant draft EIR do little to achieve the coequal goals, particularly with regard to water supply reliability. Water Authority staff will draft comments and submit them to the DSC by the February 2 deadline. The comments will address the following concerns, among others:

- The draft EIR does not address how the Delta Plan will achieve the coequal goals of water supply reliability and ecosystem restoration. It merely states that it will.
- The draft EIR does not define what would constitute achievement of the coequal goals of water supply reliability and ecosystem restoration.

- The Delta Plan does not address, and the draft EIR does not analyze, construction of an infrastructure project to improve water supply reliability, other than to call for completion of the BDCP.
- The Delta Plan does not address, and the draft EIR does not analyze, any ecosystem restoration project or program other than merely increasing freshwater flows through the Delta.
- The draft EIR does not analyze how increasing freshwater flows through the Delta will achieve the goal of ecosystem restoration.
- The draft EIR dismisses the ACWA Ag-Urban Alternate Plan without analysis. Without a definition of achievement of the coequal goals, it is impossible to analyze alternatives to the Proposed Project. The ACWA Alternate Plan lays out a process for achieving the coequal goals through the construction of water infrastructure based on the BDCP, and through habitat restoration through a combination of seasonal freshwater flows and wetlands restoration.
- The draft EIR and the Delta Plan assume a regulatory authority in the DSC that was not intended in the Delta Reform Act of 2009. The Legislature never intended that the DSC take a regulatory role in overseeing the efforts of local water suppliers outside of the Delta to reduce local and regional demand for water.

On Wednesday, January 11, Water Authority Assistant General Manager Dennis Cushman testified before the DSC in San Diego on the Delta Plan Draft EIR. His testimony is attached to this board memo. The DSC is holding a series of five regional hearings on the Delta Plan Draft EIR. Representatives from the City of San Diego, MWD, the Association of California Water Agencies, and Eastern Municipal Water District also testified.

Prepared by: Jeffrey Volberg, Government Relations Manager
Reviewed by: Dennis Cushman, Assistant General Manager

Attachment: Testimony of Dennis Cushman to the DSC

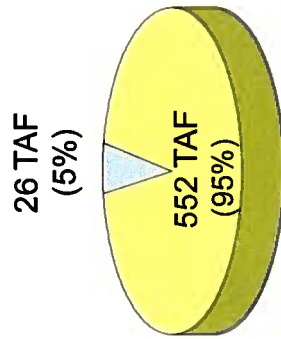
**SAN DIEGO COUNTY WATER AUTHORITY
TESTIMONY ON THE
DELTA PLAN DRAFT EIR
January 11, 2012**

- Good evening, Chairman Isenberg and Council Members Gray and Marcus. I'm Dennis Cushman, assistant General Manager of the San Diego County Water Authority. Thank you for the opportunity to testify on the Delta Plan Draft EIR from the viewpoint of the San Diego region.
- The Water Authority will provide written comments on the Draft EIR before the deadline of February 2, and appreciates the opportunity to provide these initial comments.
- The San Diego County Water Authority imports water through the Metropolitan Water District and through its water transfer with the Imperial Irrigation District and through investments our ratepayers made in lining the All American and Coachella canals.
- The Water Authority and its 24 member retail water agencies and cities have made billions of dollars of investments over the past 20 years to diversify San Diego County's water supply and reduce dependence on water imported from the Metropolitan Water District. In 1991, San Diego County was dependent upon MWD for 95 percent of all water used in the county. Today, supplies from MWD account for less than 50 percent of the county's water supplies. By 2020, supplies from MWD will represent 30 percent of the county's water supply. I will submit a copy of my testimony, and attach to it a graphic that shows the tremendous strides we have made to improve our regional self-sufficiency.
- By 2020, the Water Authority will have invested \$3.5 billion in capital improvements to support its regional self-sufficiency through water supply diversification and investments in major, large-scale infrastructure.
- However, for the foreseeable future, the Water Authority and Southern California will need water from the Bay-Delta to meet demand.
- The Water Authority supports a reasonably sized and cost-effective Delta fix for which firm financial commitments have been obtained from the water agencies expected to pay for the facilities.
- The Water Authority was strongly supportive of the Delta Vision Strategic Plan and worked for the passage of the Delta Reform Act of 2009.
- The Water Authority is concerned that the Proposed Project examined in the Draft EIR relies on regulating local and regional efforts toward self-sufficiency to achieve the coequal goal of water supply reliability.
- Over the past two decades, without the burden of such proposed additional regulations, the Water Authority has shown that it is fully capable of improving regional self-sufficiency through its own efforts and those of our 24 member retail water agencies and cities.

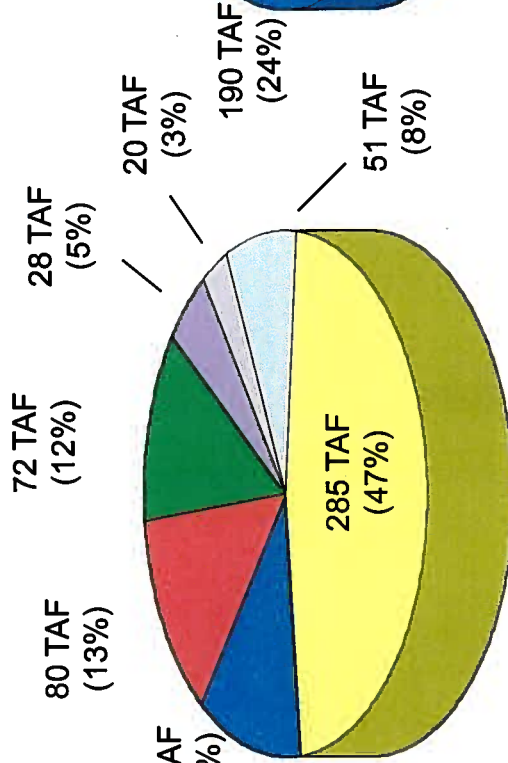
- What the Water Authority sees as achievement of the coequal goal of improving water supply reliability would be the restoration of water supplies that have been restricted under the Endangered Species Act, through the removal of threats to the listed species and recovery of those species.
- We do not see anything in the Proposed Project that achieves this goal. Rather, the Proposed Project seems to emphasize adjusting to the restrictions on water supply.
- The Water Authority is also concerned with the emphasis on water flows through the Delta as the primary means of achieving the coequal goal of ecosystem restoration. While some changes to seasonal flows may be necessary to restore fish populations, there are many other stressors on fish that are not adequately addressed in the Delta Plan or the Draft EIR.
- With respect to the Draft EIR, the document does not *define* achievement of the coequal goals. Without such definition, it is impossible to fully evaluate the Proposed Project and alternatives.
- The Draft EIR asserts that the Proposed Project will achieve the coequal goals and that the alternatives will not, but the Draft EIR does not say *how* it will achieve the coequal goals, nor does it define what achievement of the coequal goals consists of.
- At a minimum, the Draft EIR must define and quantify achievement of the coequal goals and evaluate the Proposed Project and project alternatives against that definition.
- While the Draft EIR evaluates project alternatives against the Proposed Project, it does not set out the alternatives in full, as they were submitted to the Council. The alternatives are merely paraphrased in a manner that does not accurately depict the proposals and prejudices the reader against the alternatives.
- The alternatives should be laid out, *in full*, in the Draft EIR and evaluated fairly against the Proposed Project and the definitions of achievement of the coequal goals.
- Other than a recommendation that the BDCP be completed on time, the Draft EIR and the Proposed Project do not include a process for moving forward with a project to build a dual conveyance system. There is no contingency plan if the BDCP fails to meet the standards of an NCCP, other than to reduce local demand for Delta supplies.
- On the whole, the Proposed Project is only different from the No-project Alternative in that it adds a layer of regulation to local and regional efforts to achieve self-sufficiency – regulation that is unwarranted and unneeded.
- Thank you.

Improving Regional Self-Sufficiency San Diego County Water Supply Diversification 1991-2020

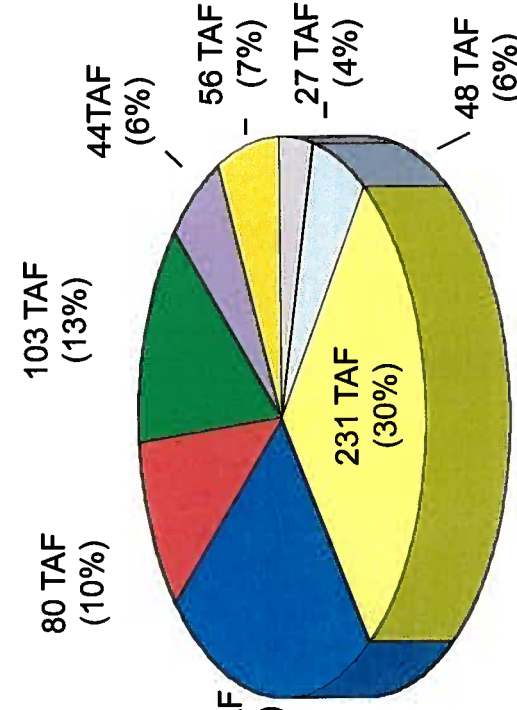
1991



2011 (estimated)



2020



- Metropolitan Water District
- Imperial Irrigation District Transfer
- All American & Coachella Canal Lining
- Conservation (existing and additional)
- Recycled Water
- Seawater Desalination
- Groundwater
- Local Surface Water