



### **Delta Counties Coalition**

Contra Costa County · Sacramento County · San Joaquin County · Solano County · Yolo County  
*"Working together on water and Delta issues"*

May 9, 2016

The Honorable Estevan Lopez  
Commissioner, Bureau of Reclamation  
Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

Dear Commissioner Lopez:

The Delta Counties Coalition (DCC) thanks you for meeting with us in March to discuss issues related to the Sacramento-San Joaquin Delta. We greatly appreciate your thoughtful comments regarding our concerns with Governor Brown's California "WaterFix" tunnels plan and the importance of the Federal and State agencies re-engaging with the Delta Counties on governance and implementation issues, should the WaterFix proposal secure all of the necessary State and Federal permits to move forward. The DCC was particularly encouraged by your suggestion that the recent joint Federal-State discussions on an adaptive management structure would provide a good opportunity for the Federal and State agencies to re-initiate substantive discussions with the Delta Counties on governance, adaptive management, and other Delta County concerns regarding the WaterFix proposal and the Delta in general.

Attached is an outline of the DCC's Governance Role in Adaptive Management for your consideration. This is the basis for the initiation of substantive discussions on the DCC's concerns regarding the Delta and adaptive management. Please note that the DCC is not about just saying "no" to the WaterFix. As set forth in its 12 adopted operating principles, the DCC has long advocated for a portfolio of near and long-term solutions and alternatives that are science-based, cost-beneficial, implementable, and developed in an open, thoughtful, and well-considered process. Any solution must work not just for interests south of the Delta, but for the Delta region and the entire State.

Thank you in advance for your consideration, and we look forward to your recommendations on how to proceed. Additionally, Solano and Yolo counties intend to follow up separately with a discussion

Hon. Estevan Lopez

May 9, 2016

-2-

framework on governance relating to habitat restoration and the 2008 and 2009 Biological Opinions.

Sincerely,



Mary Nejedly Piepho  
Supervisor, Contra Costa County



Skip Thomson  
Supervisor, Solano County



Don Nottoli  
Supervisor, Sacramento County



Jim Provenza  
Supervisor, Yolo County



Chuck Winn  
Supervisor, San Joaquin County

Attachment – The DCC’s Governance Role in Adaptive Management

cc: Secretary Sally Jewell, United States Secretary of the Interior  
Jennifer Gimbel, Principal Deputy Assistant Secretary, Office of Water and Science  
Department of the Interior  
DCC Federal Delegation  
Governor Jerry Brown  
Secretary John Laird  
DCC State Delegation  
Randy Fiorini, Delta Stewardship Council  
Jessica Law, Delta Stewardship Council

**California WaterFix**  
**The Delta Counties Coalition's Governance Role in Adaptive Management**  
**May 2016**

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**Basic Engagement and Governance Principle**

The Delta Counties Coalition (DCC) has a long-standing principle that the state and federal lead agencies must have a system in place that represents and includes local government in any governance structure in the Delta. As that applies to the WaterFix, the DCC repeatedly stresses the importance of being directly involved in all aspects of the decision-making on planning, construction, and real-time operation of Delta projects. This includes conveyance systems including those described on the WaterFix. (Note: The DCC is not advocating for any sort of veto authority given that local governments are neither issuing nor receiving permits for the project.)

**DCC's Role in the Adaptive Management Process**

Should the WaterFix ultimately receive all the requisite state and federal permits, adaptive management and monitoring of operations carried out under the auspices of the project will be an important implementation feature. As such, the DCC needs to be fully, fairly, and effectively involved in that adaptive management and monitoring. The DCC has not seen an adaptive management and monitoring program developed in the WaterFix documents released.

Various stakeholders highlight the importance of flexible alternatives in their comments prepared for the recirculated WaterFix environmental documents. It is difficult to imagine that any proposal for such a complex and evolving system could be implemented as proposed; however, some initial and ongoing modifications seem desirable and unavoidable. The operating guidance for the new alternatives seems disconnected from the many other water management and environmental activities in and upstream of the Delta. This is important for managing environmental and water supply resources related to Delta diversions.

While it is difficult to specify detailed operations for such a complex system, more details on the governance of operations (e.g., real time operations process) are useful. The operational details as described are unrealistic and inflexible. Presentations of delivery-reliability for different alternatives remain absent. Environmental regulations on Delta diversions have changed significantly and abruptly over the years and will most likely continue to change. Project water supply and environmental performance are critical to develop the appropriate operating criteria.

**Science and Adaptive Management**

The collaborative science ideas seem philosophically attractive, but are not given much substance. Monitoring is mentioned, but there is a lack of detail on organization, intent, and resources. Adequate funding to support monitoring, collaborative science, and adaptive management is also a chronic problem.

Section ES.4.2 of the WaterFix recirculated documents states that “proponents of the collaborative science and monitoring program will agree to provide or seek additional funding



when existing resources are insufficient.” This suggests that these activities are lower in priority than they should be.

Adaptive management and monitoring are essential for a project as complex and far-reaching as the WaterFix. In fact, the environmental document prepared for the WaterFix acknowledges this and states that there will be “a robust program of collaborative science, monitoring, and adaptive management” (RDEIR Executive Summary, page 37). Yet, while confirming that monitoring and adaptive management are critical elements of the permitting process under CESA and ESA, specific details of such a monitoring and adaptive management plan are missing from the recirculated documents. Unfortunately, these very critical elements are obviously and inexplicably absent from the WaterFix. Waiting until some unspecified future date to develop a reliable and functional monitoring and adaptive management system deprives the public and decision-makers of the opportunity to assess and comment upon such a plan.

In fact, the Delta Independent Science Board (DISB), having reviewed the WaterFix, emphatically notes that the recirculated environmental documents repeat the inadequacies of the BDCP environmental documents. The DISB states that the deferral of providing details of the adaptive management process, collaborative science, monitoring, and the resources for these efforts is simply too late for WaterFix to be a successful plan. The DISB also notes that for the WaterFix to meet the consistency requirements of the Delta Plan, a clearly defined adaptive management plan must be an integral part of the plan. Details on how adaptive management and monitoring will be done and resourced must happen now so that the public and decision-makers can review and make an informed decision on the adequacy of the WaterFix in a timely manner.

The DISB made a number of recommendations regarding WaterFix adaptive management and monitoring, including:

1. Support adaptive management with funding that is dependable and flexible.
2. Design and support monitoring.
3. Integrate science and regulations to enhance flexibility.
4. Develop a framework for setting decision points or thresholds that will trigger a management response.
5. Use restoration sites to test adaptive management and monitoring protocols.
6. Capitalize on unplanned experiments.
7. Recognize when and where adaptive management is not appropriate.

The DISB is not alone in expressing concerns about plans, which only contain vague promises of adaptive management. Legal scholars heavily criticize the so-called adaptive management plans that contain little more than ad hoc contingency planning and crisis management. They appropriately deem this “a-m lite” (i.e., “adaptive-management lite”). Such “a-m lite”, as with the WaterFix, does not live up to either the theoretical promise or the legal demands of substantive and procedural law.

Again, the DCC wants to work with the appropriate federal and state agencies to craft a real, workable, and inclusive adaptive management and monitoring plan for inclusion in the WaterFix documents as a legally enforceable principle and program.

At a minimum, adaptive management must entail the development of a comprehensive conceptual model for evaluating the potential causes of environmental degradation, as noted by the DISB. The WaterFix documents contain little in the way of such modeling.

Moreover, planning and design of an adaptive management program must be developed simultaneously with a plan for monitoring and those plans should be developed before implementation of the project. That is not the case with the WaterFix as there is little evidence in the recirculated documents of a specific set of plans for adaptive management and linked monitoring. The WaterFix simply provides empty and unclear promises.

### **Conclusion**

Funding is critical to the success of adaptive management and monitoring plans. It is, perhaps, the most important factor influencing a decision to implement those plans. The Waterfix does not provide 1.) a clearly calculated cost of a successful adaptive management plan and an integrated monitoring program or 2.) any discussion of the assurances of the funding of such costs. An adaptive management plan and related monitoring plan cannot be developed without assured enforceable funding.

As suggested by the DISB, assured funding for an adaptive management and monitoring program for the WaterFix should be a budgetary line-item allocation in the range of 10% to 20% of the cost of the WaterFix project. That funding should be treated as a trust fund based on newly dedicated revenues which are not merely transferred from other existing sources. Absent these assurances, any WaterFix adaptive management and monitoring program will fail.

The public and decision-makers reviewing the WaterFix environmental documents need the details of an adaptive management and monitoring plan and the details of assured funding.

The DCC looks forward to working collaboratively with you and others involved with not only adaptive management and monitoring to develop and implement the aforementioned plans, but all other governance aspects associated with the WaterFix.