CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

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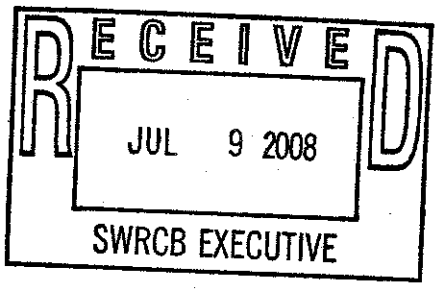
Public Comment
Bay-Delta Strategic Workplan
Deadline: 7/9/08 by 12 p.m.



July 9, 2008

Via First-Class Mail & Email
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Tam M. Doduc, Chair
STATE WATER RESOURCES CONTROL BOARD
c/o Jeanine Townsend, Clerk to the Board
P.O. Box 100
Sacramento, CA 95812

Re: June 2008 Draft Strategic Workplan for the San Francisco Bay/Sacramento - San Joaquin Delta Estuary (Bay-Delta)

Dear Chairwoman Doduc and Members of the Board:

The California Farm Bureau Federation ("Farm Bureau") is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the State of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 counties. Farm Bureau currently represents approximately 91,000 members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

Farm Bureau appreciates the opportunity to provide comments on the State Water Resources Control Board's June 2008 Draft Strategic Workplan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta). Farm Bureau appreciates the State Water Board's desire to develop a Workplan to implement coordinated activities with other key players and programs addressing water quality, supply and environmental issues in the Bay-Delta. Nevertheless, the current scope of the Draft Strategic Workplan raises concerns, as expressed below.

A. <u>Solutions to Long-standing and Intractable Problems</u>:

The State Water Board has broad authorities in the areas of the water rights, water quality, administration of the public trust, etc. Many items included in the Workplan relate to intractable problems, the root causes of which exceed the existing capacity of regulators and the regulated community alike. In several instances, it seems quite likely that long-delayed structural measures (infrastructure or physical improvements) or other deliberate management may be needed to achieve any meaningful and lasting progress of such issues. If the State Board's exercise of its authorities can assist in a constructive way with a move toward lasting solutions, as opposed to half measures or actions that attempt to allocate responsibility for a problem without actual feasible means of eradicating or significantly mitigating the problem, this might be seen as a good long-term outcome—provided that the impact of such an exercise of authority on the regulated community as a whole, or on any segment of that community, is not excessive. Examples of such intractable problems include problems relating to San Joaquin River inflow, the Salinity and Boron TMDLs at Vernalis and Upstream of Vernalis, the State Water Board's Drinking Water Policy, Southern Delta Salinity, Activities to Ensure Reasonableness of the SWP's and CVP's Methods of Diversion, and Salinity Management Plan for the Central Valley. Examples of potential structural improvements include (1) constructed drainage improvements or other methods of drainage disposal or elimination in the San Luis Unit of the CVP; (2) South Delta barriers; (3) other Delta barriers including a potential barrier on the Three-Mile Slough and possible near-term barriers to minimize South Delta entrainment risks; (4) improvements to Delta conveyance that achieve some significant degree of separation between ecosystem functions (fish passage, salinity, productivity, etc.) and water supply functions (drinking water, in-Delta agricultural and export water supply); and (5) new storage both above and below ground. Long-standing conflicts to be resolved include conflicts between in-Delta and export water supply, as well as flows and suitable water quality for protection of fish and wildlife resources and a functional ecosystem.

B. <u>Agricultural Water Use Efficiency</u> (Draft Workplan, pp.84-89):

The range of potential supply from agricultural water efficiency provided in the text and attributed to the California Water Plan Update 2005 (185,000 to 2,917,000 acre-feet by 2030) appears to be erroneous. The actual range provided in the 2005 Update is roughly 200,000 to 800,000 acre-feet.[1]

The Workplan states that agriculture represents 79 percent of total water use in California.[2] Whereas agricultural water use is estimated to represent 29 to 52 percent of total dedicated water

[1] See California Water Plan Update, Volume 2, Chapter 1 at 1-5 (http://www.waterplan.water.ca.gov/previous/cwpu2005/index.cfm).
[2] See Draft Workplan at 85.

supply in California, however, environmental water use[3] has in recent years accounted for 35 to 63 percent of this total.[4] Farm Bureau believes that the waste and unreasonable use prohibitions of Article X, Section 2 of the California Constitution apply not only to agricultural and urban use, but also to instream environmental use. Efforts by the Water Board and other state agencies to improve water efficiency while maximize water use for beneficial uses should examine the reasonableness of the State's environmental water use. Environmental water dedications that divert or reallocate water supply from other beneficial uses to environmental water use should be scrutinized as to the reasonableness of such use in terms of any measurable benefit and also in terms of the economic cost to other beneficial uses of water.

The Draft Workplan refers to potential reporting requirements, under existing or, presumably, in some cases, new legislative authorities. An important, unresolved issue in this regard is the definition of an "agricultural district," in terms of the different thresholds that would trigger one or another reporting requirement (acreage served, water delivered, etc.). Whatever the standard, there should be some level of consistency, as well as a supporting rationale in terms of the benefit that would accrue and the regulatory and administrative burden this would imply. The current draft lacks clarity in both respects. Further development of any new requirement should involve affected stakeholders and, in particular, a significant cross-section of the state's diverse agricultural community.

Many natural incentives, based on economics, exist to further increased agricultural water efficiency. Grant programs and technical assistance provide voluntary means of maximizing efficiency, without any need for an unduly punitive "command and control" regulatory or prescriptive approach. As noted in the Draft Workplan, Water Code section 275 authorizes the State Water Board to "take all *appropriate* proceedings or actions" to prevent waste or violation of the reasonable use standard. However, hand picking and prosecuting "one urban and one agricultural" "area[] or supplier" in the Delta watershed, as proposed in the Workplan at page 89, solely for the sake of meeting an arbitrary regulatory target, is *not* "appropriate." Streamlining grant programs or focusing available funding on certain areas of the State (for example, areas hit especially hard by ESA mandates or other regulatory requirements) or in times of scarcity (below normal, dry, and critical dry years) can provide growers with added incentive to improve efficiencies. Grant programs can be conditioned on certain types of monitoring or reporting. Monitoring and reporting requirements, however, should serve a legitimate purpose, respect established legal and jurisdictional boundaries and avoid imposing requirements that are overly burdensome, intrusive, excessively detailed or onerous. Groundwater use—as opposed to groundwater quality—without a clear hydrologic connection to a surface stream is beyond the pale of the Water Board's existing authorities and, therefore, inappropriate as a priority for the Draft Strategic Plan.

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[3] Defined as "dedicated" environmental water including "instream flows, wild and scenic flows, required Delta outflow, and managed wetlands water use." See California Water Plan Update, Volume 3, Chapter 1 at 1-11. (http://www.waterplan.water.ca.gov/previous/cwpu2005/index.cfm).

[4] See *ibid.*

Efforts or new initiatives to increase existing agricultural water efficiencies should take into account past improvements and the relative cost of a given increase in efficiency, particularly as existing efficiencies increase and approach an upward limit over time. Furthermore, any such effort should consider not only total water use, but also how much food a given volume of water produces over time (agricultural production per unit of applied water). For example, by one estimate, while the total volume of applied water per acre between 1967 (the first year of operations of the State Water Project) and 2000 increased by 2 percent, total crop production (yield) during the same period increased by 89 percent.[5] Similarly, by the Department of Water Resources' estimate in the 2005 California Water Plan Update, agricultural production per unit of applied water increased 38 percent between 1980 and 2000.[6]

It is also important to recognize that maximal efficiency is neither achievable, nor desirable in all cases. While high levels of efficiency can improve water supply by reducing demand, among other benefits, water efficiency can also lead to several, potential adverse environmental impacts. Examples include potential adverse effects on instream flows, reduced dilution and greater concentration of contaminants, reduced groundwater recharge, decreased return flows, adverse impacts on downstream water use, increased concentration of salts in soils and reduced crop yields. Drip irrigation and deficit irrigation is not possible, appropriate, or desirable for all crops or in all locations. Achievable efficiencies depend on crop types and local conditions. "Numeric objectives," even as a long-term goal, would fail to account for such local conditions and differences among crop types, would not afford grower necessary flexibility, and are therefore an inappropriate measure of agricultural water efficiency.

C. Updated and New Science:

Many elements of the Workplan require significant collection and development of scientific study and empirical collection and analysis of relevant data. The comprehensive monitoring program seems to provide the most comprehensive potential opportunity to meet this objective. This program appears to have the greatest promise to garner relevant information across an array of problems and unknowns and, if designed correctly, represents a sound "analysis first" approach for any of a variety of elements in a reasonable Delta strategy. A comprehensive program appears to be the approach that is most adaptable to changing hypotheses and shifting priorities of time—and also least likely to focus disproportionately on single constituents or potential problem areas to the exclusion of other competing hypotheses (induced analytic "tunnel vision," as it were).

[5] Per telephone communication with Mike Wade of the Farm Water Coalition, July 8, 2008.
[6] California Water Plan Update 2005, Volume 2, Chapter 3 at 3-1 (http://www.waterplan.water.ca.gov/docs/cwpu2005/vol2/v2ch03.pdf).

As to science, certain Workplan elements call for updated information and scientific evaluation of existing requirements. Two notable examples are the technical and scientific basis of the Southern Delta Salinity Standards and the VAMP program. Since VAMP is set to expire, and there appears to be some questions as to the overall effectiveness of the program and several years have passed since the underlying science for the program was first developed, it does appear necessary that a reassessment should occur. Changed circumstances, including potential future changes to Delta conveyance and new operational restrictions on CVP and SWP operations related to the Pelagic Organism Decline and recent federal order may indicate significant changes or possibly even elimination of existing program, such as it is. Should such changes occur, some portion of the flows currently dedicated to VAMP might be employed differently, and for a different set of objectives?

Sound science and data relating to potential effects of pyrethroid and other pesticides should proceed any potential regulatory action. The proposed approach, with it emphasis on screening level studies, stakeholder collaboration, and coordination with on-going activities of the Department of Pesticide Regulation, the County Agricultural Commissioners, the Department of Food and Agriculture and Watershed Coalitions via the existing Irrigated Lands Regulatory Program, seem preferable to a unilateral, regulatory approach.

In addition, possible food web impacts of ammonia and possible toxic effect of blue-green algae should be a high priority for Workplan.

Regarding the Southern Delta Salinity Standards, while the particular methodology used as the basis for these standards does appear rather dated (1978), the basic purpose for which these standards were developed—protection of irrigated agriculture as a designated beneficial use—remains unchanged. Regardless of any new or differing methodology, the basic purpose of the existing objectives must remain unchanged. In addition, it would be important to consider the potential water supply and water quality implications of any significant downward revision in the existing standards: An increase in Delta salinity could mean more exported salt to the San Joaquin Valley, higher in-Delta water demand (to meet leaching requirements), and higher concentrations of contaminants with potential biological consequences.

Lastly, several other Workplan elements seem to require significant development of additional data to confirm whether or not a compelling problem or need exists. With respect to several in-Delta elements, in terms of the proportional impact system-wide, Farm Bureau is quite skeptical: Cases in point include Delta island discharge and pesticide use, small local diversions, and in-Delta water use.

D. <u>In-Delta Water Users</u>:

In general, the Water Board's Strategic Workplan, as currently drafted, takes an unduly heavy-handed approach to certain perceived issues that have a direct effect on water users in the Delta proper. There appears to be a prosecutorial focus through much of the Workplan towards Delta Water users. Farm Bureau feels that much of this prosecutorial zeal is misplaced or disproportionate to the likely gravity and magnitude of the relatively small sub-set of impacts and stressors involved—and, furthermore, that many of these excessively onerous and punitive measures, if actually carried out, would not actually appreciably improve the situation in the Delta. Undoubtedly, adverse environmental conditions and certain stressors on the Delta ecosystem stem in some small measure from activities in the Delta itself. Over time, however, existing water and land uses in the Delta have remained largely constant over the last several decades and, to the extent, these variables have seen little change over a long period of time, it seems quite unlikely that they are suddenly now a large contributor to the recent ecological decline of the system. Rather, it seems far more plausible that the more likely cause of the poor existing condition of the Bay-Delta estuary is, in effect, an accumulation of various effects possibly including some effects in the Delta, but also extending well beyond the Delta itself to activities throughout the Delta's entire watershed. Beyond this, it strikes us that another possible consequence of an overly aggressive Water Board agenda for the Delta proper is that such initiatives either penalize Delta water users disproportionately and unfairly, or that they implicate upstream water rights holders and dischargers and, thus, threaten to rapidly expand into an intractable and inefficient conflict of statewide proportions—in other words, a marked escalation of the 'water wars' that have recently rekindled and continue to plague our State.

At the same time, it is appropriate to recognize that water use in the Delta has evolved somewhat differently than in other areas of the state. This is a circumstance that stems partly from the senior status of many water diversions in the Delta, partly from the unique topography and hydrology of the Delta, and partly from the Delta's critical, historical role as the hub of the State's water distribution system. Thus, for example, regardless of any intervening accidents in the chain of title over the course of many decades, the basis of many historical beneficial uses may be an original riparian or pre-1914 water right. Different from many other areas of the State, water users in the Delta typically rely on direct diversions from Delta channels, as opposed to a central point of diversion, delivery and distribution. Similarly, while land and water uses in the Delta have remained largely static since the pre-project days of the early 20th century, the projects, many upstream diversions, and much of the increased demand for water supply throughout the State is, in effect, a latter-day superimposition on the existing water rights and water use in the Delta.

Another feature that distinguishes the Delta or "Delta lowlands" from other areas of the States relates to the unique hydrogeologic conditions existing in the region. These differences have been recognized in the past as a technically valid basis for separate treatment of the Delta in terms of both water rights and water diversions. As the long-standing view of the last several

decades, this historic view deserves considerable deference and should be reconciled with any new approach to the administration of water rights and water diversion in the region. Other differences may emerge from the fragmented nature of the landscape itself, literally dividing water users and landowners, as it does, into islands and small enclaves that are perhaps not optimally suited or configured to facilitate comprehensive watershed management or uniform coordination on water quality issues, for example, with special consideration and accommodation.

It is in light of these characteristics of the Delta, several proposed approaches in the current Strategic Plan draft seem to overlook history and instead seek to right collective errors, wrongs and oversights of the past at the expense of the Delta water users themselves. Instead of the proposed approach, it seems that some more flexible process of normalization that acknowledges the historic uniqueness of the Delta is the more appropriate option for the region.

Areas of the Draft Strategic Plan that we believe focus disproportionately on Delta users include the following:

- Characterization of Discharges from Delta Islands
- In-Delta Pesticide Use
- Water Rights Enforcement and "Illegal Diversions"
- Local Diversions

E. Protection of the Public Trust and Reasonableness of CVP and SWP Method of Diversion:

The "public trust" is, in effect, synonymous with the "public interest." The "public interest" includes protection of beneficial uses, including but not limited to the fish and wildlife resources, as well as reliable water supply for cities and farms, both within the Delta and beyond. Any contemplated new application of the public trust doctrine in connection with beneficial uses in or dependent upon the Bay-Delta system should respect and recognize this basic fact.

Article X, Section 2 of the California Constitution requires, among other things, that the State's water resources "be put to beneficial use to the fullest extent of which they are capable." Article X, Section 2's prohibition on waste and unreasonable use applies to *all* beneficial uses, including protection of fish and wildlife resources. A reasonableness standard that too narrowly interprets the public trust to apply only to fish and wildlife resources, or that allocates large amounts of water away from existing beneficial uses so as to effectively eliminate or greatly limit those existing beneficial uses, is contrary to Article X, Section 2's requirement that the State's water resources "be put to beneficial use to the fullest extent of which they are capable." Similarly, a waste or unreasonableness standard that entirely overlooks the reasonableness of environmental water use, in terms of any demonstrable benefit achieved or scientific rationale for such

dedication of water resources, would similarly violate Article X, Section 2 prohibition on "unreasonable use" and "conservation" of the State's waters for the "public interest."

Water quality and flows for ecosystem purposes often conflicts with water quality for other beneficial uses, as well as in-Delta and export water quality and reliable water supplies. Long-term solutions for the Delta must balance and reconcile these conflicting priorities, without eliminating either purpose. As noted elsewhere herein, means to accomplish this may require structural modifications and new infrastructure.

As recognized in the Workplan, the timing and volume of diversions is an important dimension of the "reasonableness" question. Existing patterns of diversions and restrictions on export pumping should not limit or restrict modifications which may be necessary to maximize protection of fish and wildlife and ecosystem functions, without unduly impacting water supplies for other beneficial uses.

The State Water Board's intent to closely coordinate with and monitoring ungoing processes, including the Bay-Delta Conservation Plan and the Governor's Delta Vision process, is appropriate. It is important, however, that the Board preserve a certain level of independence in terms of its statutory duties and authorities. The Board's intent, as stated in the Workplan, with respect to an adequate range of conveyance alternatives and potential mitigation, including mitigation and avoidance of adverse in-Delta water quality impacts, is well taken. In particular, any hydrodynamic and water quality modeling from BDCP and/or Delta Vision should be independently reviewed and potentially supplemented to ensure accurate impacts assessment and formulation of an appropriate range of alternatives and mitigation.

E. <u>Suisun Marsh</u>

Potential salinity impacts from proposed tidal marsh restoration in Suisun should be carefully considered.

Thank you for the opportunity to provide our comments and concerns. We look forward to further involvement and discussion with the State Water Board on the development of the Bay - Delta Strategic Workplan.

Sincerely,

Kari E. Fisher
Associate Counsel

Justin E. Fredrickson
Environmental Policy Analyst

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