

February 11, 2020



*Delivered via email to: [input@waterresilience.ca.gov](mailto:input@waterresilience.ca.gov)*

Mr. Jared Blumenfeld  
Secretary for California Environmental  
Protection Agency  
P.O. Box 2815  
Sacramento, CA 95812

Ms. Karen Ross  
Secretary for California Department of  
Food and Agriculture  
1220 N Street  
Sacramento CA 95814

Mr. Wade Crowfoot  
Secretary for Natural Resources  
1416 Ninth Street, Suite 1311  
Sacramento, CA 95814

Dear Secretaries Blumenfeld, Crowfoot, and Ross:

Thank you for the opportunity to comment on the State's Draft Water Resilience Portfolio (Draft WRP). The State Water Contractors (SWC) appreciate you incorporating many of our comments into the Draft WRP. There are many areas identified in the Draft WRP that we agree with and support. There are a few areas that we believe would benefit from further clarification and specific edits and have outlined them below.

### **Areas of Support**

First, SWC agrees that new Delta conveyance through the Delta is necessary and would complement many of the actions called for in the Draft WRP aimed at capturing water during periods of high river flows when impacts to sensitive fish are low for storage and use during dry periods. Delta conveyance is a critical upgrade to the State Water Project and its ability to combat risks it faces from seismic events, sea level rise and climate change. The SWC also agree that water infrastructure and management must be updated to allow capture of water when it is available in increasingly intense storm events and to provide water supplies and protect the environment during prolonged dry periods. New Delta conveyance is critical to achieving this objective.

The SWC agree with the Draft WRP that the focus on protecting single species rather than ecological functions has had limited success, and a paradigm shift to a more holistic, science-based approach that incorporates adaptive management is needed. The Voluntary Agreements are the most promising path forward to address the beneficial uses of water in the Delta in a smart, science-based manner that is aimed at restoring ecological functions. In this regard, SWC appreciates the suite of actions under heading 13, "Simplify permitting to help launch more multi-benefit, multi-partner projects," as well as action 11.3, "Support expansion of multi-benefit floodplain projects across the Central Valley and coastal regions, including projects that restore or mimic historical river and floodplain processes, such as the Yolo Bypass and Cache Slough Partnership program."

#### **DIRECTORS**

**Matthew Stone**  
**President**  
Santa Clarita Valley Water  
Agency

**Valerie Pryor**  
**Vice President**  
Alameda County Flood  
Control and Water  
Conservation District,  
Zone 7

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**Secretary-Treasurer**  
Mojave Water Agency

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Metropolitan Water District  
of Southern California

**Robert Cheng**  
Coachella Valley Water  
District

**Mark Gilkey**  
Tulare Lake Basin Water  
Storage District

**Roland Sanford**  
Solano County Water  
Agency

**Ray Stokes**  
Central Coast Water  
Authority

**Craig Wallace**  
Kern County Water Agency

**General Manager**  
Jennifer Pierre

SWC supports actions 13.1-13.7 because they are necessary to expedite habitat restoration projects in the Delta and Delta watershed that advance the coequal goals, the Delta Plan, California EcoRestore, and the Voluntary Agreements. SWC and its member agencies have invested hundreds of millions in such actions since the 1994 Bay-Delta Accord, including restored access to salmon spawning grounds, seasonal floodplain habitat, and tidal marsh. But as the Delta Plan, EcoRestore, and the draft Water Resilience Portfolio recognize, more restoration is needed, and the sooner the better.

While we support action 13.2, the development of expedited and cost-effective permitting mechanisms for common types of restoration and enhancement projects, could benefit from more specific direction to the various state agencies with permitting authority over such projects to coordinate with federal and local responsible agencies to avoid Catch 22 situations where permit terms are incompatible. As has occurred on past restoration projects where one agency insists that restored habitat exclude the general public, but another agency insists it provide recreational access, it can take months to reach a compromise and often entails elevating the issue to agency decision makers.

In addition, SWC recommends the addition of specific direction to the Department of Fish and Wildlife to issue one or more programmatic California Endangered Species Act permits and lake and stream alteration agreements to further streamline permitting.

Past projects, like the recently completed Tule Red tidal marsh restoration project, could provide a lessons-learned roadmap for current and future restoration actions in the Delta and Suisun Marsh. Others in the upper watershed could provide templates for spawning ground restoration, side-channel habitat restoration, and other actions that benefit sensitive salmon runs. SWC welcomes the opportunity to work with the Newsom administration to share our experience with restoration and our ideas to expedite more multi-benefit, multi-partner projects.

### **Request for Revisions to Reduced Reliance Water Portfolio Action 18.3**

Draft Water Portfolio Action 18.3 raises concerns because it does not reflect the Delta Reform Act “reduced reliance” policy that it appears to be designed to advance.

The state’s policy “to reduce reliance on the Delta in meeting California’s future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency” does not mean State Water Project or Central Valley Project supplies should be reduced, as some have argued, and as Draft Action 18.3 suggests. (Water Code, § 85021.) That would be inconsistent with the state’s coequal goal for the Delta of restoring and protecting reliable supplies from the Delta, and it would deter investment in new Delta conveyance—something the draft plan rightly promotes—since it would lead to ever dwindling State Water Project supplies. Indeed, reliable State Water Project supplies make local and regional projects like recycling possible—one of the key actions needed to reduce reliance to meet future needs. As explained in our prior letter, restoring and protecting State Water Project supplies keeps water affordable for millions of Californians, including those in disadvantaged communities.

Instead, reduced reliance means that as California's population, economy, and water demands increase, regions that depend on supplies from the Delta watershed will need to meet those growing needs by investing in feasible, cost-effective measures to stretch existing supplies and create new local or regional supplies. Diversifying supplies, ensuring reliable Delta supplies, and increasing storage also enables the state and regions that rely on water from the Delta to capture water when river flows are high and risks to sensitive fish species are low, facilitating storage for use in extended dry periods, which reduces reliance on the Delta at times when drought amplifies stressors on the ecosystem.

SWC's member agencies have been reducing their reliance on the Delta since long before the Delta Reform Act by investing in conservation, conjunctive use, remediating groundwater contamination, water use efficiency, recycling, desalinization, new storage, coordinated regional planning, and otherwise diversifying local supplies to ensure their respective service areas have reliable, affordable supplies. As explained in our previous letter, modernizing the State Water Project and investing in actions to improve its reliability as a foundational source of water for the majority of Californians as well as hundreds of thousands of acres of farmland is essential to meeting California's needs and sustaining its economy.

As currently worded, Water Portfolio Action 18.3 raises three main concerns.

First, it assumes that DWR or the Delta Stewardship Council (DSC) have the legal authority to create a new reduced reliance "requirement" for urban or agricultural water management plans. Neither agency has such authority. Thus, Action 18.3 should be edited to propose guidance to water suppliers, not a new reporting "requirement."

If the intent is that DWR and DSC should propose potential bill language to amend the Urban and Agricultural Water Management Planning Acts, SWC urges you to ensure that it be drafted in close consultation with SWC, its members, and other affected water suppliers. Any new requirement would have to be both feasible and consistent with the Delta Reform Act. Of critical importance, any proposed new reporting requirements should not make reduced reliance a precondition to eligibility for state grants or loans.<sup>1</sup> For some suppliers, such a mandate could cripple their ability to protect or diversify local supplies, thwarting the overarching goal of the Water Resilience Portfolio and the reduced reliance policy itself.

Second, Action 18.3 should not be limited to water suppliers that receive water from "Delta-based projects," which would include new Delta conveyance. It should apply to all water suppliers who depend on water from the entire Delta watershed, especially in light of its inclusion under the heading: "Help protect the economic and ecological vitality of the Sacramento-San Joaquin Delta." The same water code provision that discusses reduced reliance established a corresponding policy: "Each region that depends on water from the Delta watershed shall improve its regional self-

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<sup>1</sup> See Water Code, §§ 10656 ("An urban water supplier is not eligible for a water grant or loan awarded or administered by the state unless the urban water supplier complies with [the Urban Water Management Planning Act]"); 10852 (same for agricultural water suppliers). As draft Action 18.3 and her article are worded, if a supplier did not show how it is reducing reliance, which is not be feasible or cost-effective for every supplier, it would not have met the new "requirement," thus rendering it ineligible for state grants and loans needed to maintain and improve the reliability of its existing local supplies.

reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.” (Water Code, § 85021, emphasis added.) In other words, improving regional self-reliance is the key to reducing reliance, not a separate objective, it applies to regions, not each individual water supplier, and it applies upstream of the Delta, not just in and downstream of the Delta, and not just to those that receive water from “Delta-based projects.”<sup>2</sup>

Third, as currently worded, Action 18.3 is inconsistent with the fundamental premise of the draft Water Resilience Portfolio, including the stated focus on “enabling regional resilience,” and the important recognition that “[d]ifferent areas of the state have very different water supplies and demand profiles,” which “requires regionally-tailored approaches to providing water supply to address demands” and that “[d]ifferent areas have unique water supplies, environmental conditions, user needs, and vulnerabilities” which means “a one-size-fits-all approach to building water resilience does not work in California.”

With this in mind, SWC proposes the following language, and would welcome the opportunity to discuss alternative language:

18.3: Work with water suppliers to draft guidance for urban and agricultural water suppliers that receive water from the Delta watershed on how to report on any past, ongoing or planned local or regional projects or programs that improve regional self-reliance ~~in the water management plans they submit to the state every five years.~~

### **Other Areas of Concern**

SWC are concerned with the statement: “water needs of California fish, wildlife and natural ecosystems” can be “quantified” on a season-by-season basis, as assumed in the text on pages 13 and 15, and as assumed is possible for the actions under heading 9, “Help regions better protect fish and wildlife by quantifying the timing, quality, and volume of flows they need.” As is demonstrated in the recent Voluntary Agreement modeling, functional flows that work with natural and altered landscapes and habitat restoration promise to be more effective than estimating only the quantity, quality and timing of flows in a watershed “needed” for fish and riparian habitat. However, we agree that all watersheds should strive to understand how flow, landscapes, and human intervention can interact to create suitable and resilient habitat conditions.

As currently drafted, Water Portfolio Action 9.4 is limited to working with universities, tribes, and non-governmental groups. It should be revised to include SWC and other water suppliers that have made considerable investments in science and who are dedicated to further advancements to better inform water management decisions.

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<sup>2</sup> Indeed, the statutory policy is not limited to “water suppliers” as defined in the Urban and Agricultural Water Management Planning Acts. Some regions that rely on water from the Delta watershed involve primarily agricultural diversions by landowners or reclamation and irrigation districts that may not qualify as water suppliers. Notably, the text of Appendix 3 on page 113 misrepresents the statutory policy as applying to “water districts.” That inaccuracy can be addressed by simply quoting Water Code section 85021, which sets forth the state policy in plain language.

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Action 9.2 should be revised to expressly acknowledge that under California law, “public trust values” of California’s waters includes diversions for human consumptive use, and not just “instream” fish and wildlife benefits, and that the public trust requires a balancing of those uses.

While we support the intent of Action 8.4, “Support mercury control programs to reduce human and wildlife exposure to mercury contaminated fish,” the TMDL process that will be used to implement this component needs to consider the practicability, effectiveness and affordability of required actions, and ideally would be developed collaboratively with affected parties and stakeholders.

Finally, in Action 26.3 there is an element on drought SWP/CVP operations that suggests modified operations to meet D-1641, which appears to mean avoid Temporary Urgency Change Petitions, in droughts lasting up to 6 years. Such a goal is infeasible due to the unique nature of droughts in California. No two droughts are alike, and even within a multi-year drought, the timing and type of precipitation, surface air temperatures, and water storage conditions vary month-to-month and year-to-year, so no plan could possibly anticipate every conceivable drought. In addition, while it may be feasible to develop a toolbox approach, it is infeasible to hold sufficient water in storage to meet all required flow and water quality criteria in a six-year drought.

We appreciate the opportunity to comment and look forward to working with this administration on these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Pierre". The signature is fluid and cursive, with a large initial "J" and "P".

Jennifer Pierre  
General Manager

cc: Nancy Vogel  
Karla Nemeth  
Jessica Pearson