

From: Erin Foresman/R9/USEPA/US
To: terry.macaulay@deltacouncil.ca.gov
Cc: Kevan.Samsam@deltacouncil.ca.gov, Karen Schwinn/R9/USEPA/US@EPA, "Melanie Rowland" <melanie.rowland@noaa.gov>, "Barajas, Federico" <FBarajas@usbr.gov>, "Milligan, Ronald E" <RMilligan@usbr.gov>, "Castleberry, Dan" <dan_castleberry@fws.gov>, "Grim, Mary" <Mary_Grim@fws.gov>, "Michael G SPK Nepstad" <Michael.G.Nepstad@usace.army.mil>, Mike Jewell <Michael.S.Jewell@usace.army.mil>, "Idlof, Patricia S" <PIDlof@usbr.gov>, "Norris, Jennifer" <jennifer_norris@fws.gov>, 'Michael Tucker' <Michael.Tucker@NOAA.GOV>, Tom Hagler/R9/USEPA/US@EPA, Luana Kiger <luana.kiger@ca.usda.gov>, "Fujii, Roger" <rfujii@usgs.gov>, "Arroyave, Pablo R" <PARroyave@usbr.gov>, "Howard Brown" <Howard.Brown@noaa.gov>, "Lohofener, Ren" <Ren_Lohofener@fws.gov>, "Belin, Letty" <Letty_Belin@ios.doi.gov>, "Glaser, Donald R" <DGlaser@usbr.gov>, 'Deanna Harwood' <Deanna.Harwood@noaa.gov>, "Schlueter, Rosalyn A (Rose)" <RSchlueter@usbr.gov>, Rod McGinnis <Rod.Mcinnis@noaa.gov>, "Shouse, Michelle K" <mkshouse@usgs.gov>, "Keay, Jeffrey A" <jkeay@usgs.gov>, "Allen, Kaylee" <Kaylee.Allen@sol.doi.gov>, "Monroe, James" <James.Monroe@sol.doi.gov>, Chris Yates <Chris.Yates@noaa.gov>, Will Stelle <Will.Stelle@noaa.gov>, "jeff.McLain@noaa.gov" <jeff.McLain@noaa.gov>, "Morales, Francia S" <FMorales@usbr.gov>, "Pennell, Becky" <Becky_Pennell@fws.gov>, Tim Vendlinski/R9/USEPA/US@EPA

Date: Thursday, April 14, 2011 02:03PM
Subject: US EPA Comments on DSC Delta Plan Draft 2

Dear Ms. Macaulay:

Thank you for the opportunity to review Delta Stewardship Council's Draft 2 of the Delta Plan. We appreciate coordination with US EPA as the Delta Plan may affect federal Clean Water Act programs and mandates in the Delta. The Delta Plan is primarily a broad programmatic document, without a lot of detail in many areas and Draft 2 appears to be in a very preliminary state for some sections that interact with US EPA programs. Given that, our review is also preliminary. Inconsistencies with federal Clean Water Act programs may not become apparent until more detailed versions of the Delta Plan are released or when specific projects or specific programs are implemented pursuant to the Delta Plan.

That said, our initial review of Delta Plan, Draft 2, did not identify any direct conflicts with EPA programs. However, some of the language used to describe water quality programs is unclear and potentially unintentionally limiting. For example, WQ P1 does not say how a consistency determination will be made, what activities constitute full compliance with a Total Maximum Daily Load program (TMDL), and limits compliance to water quality impairments covered by a TMDL. It appears that the use of the term "TMDL" may be unintentionally limiting by referring to a specific tool designed to address water quality impairments, especially in cases where no TMDL has been established. The Delta

Plan could also refer to other programs, including regulatory mechanisms such as waste discharge requirements (WDRs), waivers of WDRs, national pollutant discharge elimination system (NPDES) and stormwater permits, and other activities that protect and improve water quality, such as low impact development (LID) practices and policies. Recommendations for providing clarity and removing potential limitations include:

1. WQ P1. Describe in detail the process for making a consistency determination with respect to the water quality policies.
2. WQ P1. Replace the language "full compliance with TMDL obligations" with something like "reduced pollutant loads and progress toward compliance with water quality objectives for pollutants that are causing water quality impairments in the Delta." Specifically identify all mechanisms such as stormwater permits, NPDES permits, waivers of and full waste discharge requirements, in addition to TMDL programs.
3. Consider including water quality policies that support and enhance the Water Boards efforts (TMDLs, WDRs, NPDES permits, stormwater quality programs) to meet water quality standards and protect surface water quality for consistency with Delta Plan objectives. Examples of policies that reduce contaminant loadings to Delta waterways may include LID designs, maintaining the natural hydrograph and runoff pattern, minimizing impervious surfaces, and requiring buffer zones around streams and waterways. More examples of low impact development designs and green infrastructure can be found here http://www.epa.gov/owow_keep/NPS/lid/index.html.
4. WQ R1. Insert the word "numeric" in front of nutrient when discussing a nutrient objective.
5. WQ R3. Replace the words "Total Maximum Daily Load" with "Basin Plan Amendment" to capture the criteria setting process, as well as the load and wasteload allocations associated with the TMDL.

Please contact myself or Karen Schwinn (schwinn.karen@epa.gov, 415-972-3472) at US EPA if you have any questions or would like to discuss our comments further.

Erin Foresman
 Environmental Scientist & Policy Coordinator,
 US EPA Region 9 C/O Army Corps of Engineers
 650 Capitol Mall Suite 5-200, Sacramento, CA 95814
 Phone: (916) 557 5253; Fax: (916) 557 6877

<http://www.epa.gov/region9/water/watershed/sfbay-delta/index.html>

-----Forwarded by Erin Foresman/R9/USEPA/US on 04/14/2011 01:44PM -----

To: Erin Foresman/R9/USEPA/US@EPA, Tom Hagler/R9/USEPA/US@EPA
From: Karen Schwinn/R9/USEPA/US
Date: 04/11/2011 09:28AM
cc: sam ziegler
Subject: Fw: Identification of Potential Conflicts between Delta Plan and Federal Requirements

Formalizes their request for comment.

From: "Samsam, Kevan@DeltaCouncil" [Kevan.Samsam@deltacouncil.ca.gov]
Sent: 04/11/2011 09:18 AM MST
To: Karen Schwinn
Subject: Identification of Potential Conflicts between Delta Plan and Federal Requirements

Ms. Schwinn,

FYI – an electronic copy of a letter being sent to you.

Regards,

Kevan Samsam, PE
Delta Stewardship Council
kevan.samsam@deltacouncil.ca.gov
(916) 445-5011

Attachments:

040711 ltr_K SCHWINN.pdf