

Science will not give us a Delta answer

by **Richard L. (Rick) Wood**

It should be common knowledge by now that there is something amiss in the Delta—that 700,000-acre confluence of the Sacramento, San Joaquin, and several other rivers with Suisun Bay to the east of Fairfield and Vacaville. For decades, the unique and fragile ecosystem of the Delta has been a major source of water (and water conveyance) for the Central Valley and southern California. But as water needs have increased, so have public concerns about water quality and endangered species.

The inevitable train wreck happened in the early 1990s, when the federal government threatened to take over from state regulators. In essence, the environmentalists “won” and the water exporters begged for a truce. The truce agreement was a 1994 “Delta Accord” that established a process—nicknamed “CalFed” for state and federal agencies that governed it—to decide what to do about water supply and meanwhile begin environmental restoration and enhancement.

CalFed made progress, but it was not equipped with the tools to give us the lasting peace in the Delta we needed and sought. CalFed did, however, set the stage for the next act in this drama. That occurred with the election of Governor Schwarzenegger in 2003 and his eventual commitment to settling California’s water issues, which meant, in large part, settling the issues in the Delta.

Failure of levees on the Gulf Coast during Hurricane Katrina in 2005 and the fear of a similar occurrence in the Delta added urgency to the problem: The Delta, with its vulnerable system of levees (many acting now as dikes) and below-sea-level “islands,” was looking even less suitable as a part of a north-to-south water conveyance system and more like the site of America’s next great disaster.

In 2006, Governor Schwarzenegger appointed a “blue ribbon” committee and task force to outline a new vision and strategy for the Delta. Time ran out on the governor, however, and the usual care that would have been taken to convert the recommendations of the blue-ribbon process, completed in late 2008, to legislative action was skipped. Instead, we got closed-door negotiations and a convoy of late-night water legislation at the tail end of the 2009 legislative session.

That was not necessarily a fatal flaw, but it did create problems. Much trust in the process was lost and would need to be rebuilt.

Trust is not merely a “feel good” nicety. Our state and federal environmental laws provide ample opportunity for litigation by any well-financed plaintiff. And California, with its initiative process, provides even more opportunity for opponents

to derail a plan that lacks strong public confidence (like the 1982 referendum over the Peripheral Canal).

Among its actions taken in 2009, the legislature created a new state agency, the Delta Stewardship Council, to prepare and begin implementing a Delta Plan within two years, based in large part on the “blue ribbon” work of a year earlier.

But while the Delta Plan is to emphasize science and other “content” issues, such as funding and governance, the core problem is—and always has been—one of human relationships. That’s a “process” issue.

The content of any Delta Plan will never be perfect enough to be unassailable. And until we deal effectively with the human relationships at stake—through a well-designed process—the content of any plan *will* be assailed.

So for a Delta answer, we need to look to models and practices of human conflict resolution (as in the classic “Getting to Yes” by Roger Fisher and William Ury). A personal favorite on the subject is “Policy Making in a Democracy,” by Robert Reich, economist and Harvard professor who later became Secretary of Labor and, since 2006, Chancellor’s Professor of Public Policy at the UC Berkeley Goldman School of Public Policy.

Reich uses the term “public deliberation” to describe a process where “public values are continuously rearticulated and recreated.” Those charged with governing learn from the governed, and vice versa, in a mutually respectful setting that not only addresses the immediate decisions, but also “sets the stage for future public decisions.”

Reich acknowledges that what I call “full blown” public deliberation is not necessary or—due to limited resources—even desirable for many decisions. But for decisions that are particularly difficult, complex, important, and with many diverse interests at stake (e.g., the Delta), it may be the only way to reach what Reich calls a “sustainable decision” and what Fisher and Ury call a “wise decision.”

Reich notes that where sustainability of a decision is of prime importance, our government does us a disservice if it follows any other approach than public deliberation.

The short time frame in which the legislature gave the Delta Stewardship Council to work, therefore, creates a concern. In 2011 there will be a new draft of the Delta Plan or related documents out for comment every month, with a legislative mandate for a plan to be ready for implementation by the end of the year. That means an essentially completed draft plan by midyear.

This rushed process with its unrelenting demand for public comment is no substitute for “public deliberation” and would not seem to favor a “sustainable” or

“wise” decision. I, for one, would like to ask new Californian Robert Reich to comment on how we are doing.

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