



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

September 12, 2023

JoAnna Lessard, Project Manager
Yuba County Water Agency
1220 F Street
Marysville, CA 95901-4740

Delivered via email: jlessard@yubawater.org

RE: Comments on Notice of Preparation of a Supplemental Environmental Impact Report for the Extension of the Lower Yuba River Accord Water Transfer Program, SCH# 2005062111

Dear JoAnna Lessard:

Thank you for the opportunity to review and comment on the Notice of Preparation (NOP) of a draft Supplemental Environmental Impact Report (SEIR) for the extension of the Lower Yuba River Accord Water Transfer Program. The Delta Stewardship Council (Council) recognizes the objective(s) of the extension of the Lower Yuba River Accord Water Transfer Program (project), as described in the NOP, to extend the current water transfer program beyond its current expiration date of December 31, 2025, through 2050.

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009, codified in Division 35 of the California Water Code, sections 85000-85350 (Delta Reform Act). The Delta Reform Act charges the Council with furthering California's coequal goals of providing a more reliable water supply and protecting, restoring, and enhancing the Sacramento-San Joaquin River

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Extension of the Lower Yuba River Accord Water Transfer Program

September 12, 2023

Page 2

Delta (Delta) ecosystem. (Water Code, § 85054.) The Delta Reform Act further states that the coequal goals are to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan. (Wat. Code, § 85300.)

Pursuant to the Delta Reform Act, the Council has adopted the Delta Plan, a comprehensive long-term management plan for the Delta and Suisun Marsh that furthers the coequal goals. The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, Title 23, sections 5001-5015. Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain actions of State or local public agencies that take place in whole or in part in the Delta. (Wat. Code, §§ 85210, 85225.30.) A state or local agency that proposes to undertake a covered action is required to prepare a written Certification of Consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and submit that certification to the Council prior to implementation of the project. (Wat. Code, § 85225.)

COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN

Based on the project location and scope, as provided in the NOP, the project appears to meet the definition of a covered action. Water Code section 85057.5(a) states that a covered action is a plan, program, or project, as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

(1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh. The project occurs within the boundaries of the Delta because the project proposes to continue a long-term water transfer through the Delta.

(2) Will be carried out, approved, or funded by a State or a local public agency. Yuba Water, a local public agency, is proposing to continue the long-term water transfer.

(3) Is covered by one of the provisions of the Delta Plan. Relevant provisions of the Delta Plan that may apply to this project are detailed below.

(4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and State interests in the Delta. This project would have a significant impact on the coequal goals to provide a reliable water supply for California and to protect, restore, and enhance the Delta ecosystem.

The State or local agency approving, funding, or carrying out the project that must determine if that project is a covered action and, if so, file a Certification of Consistency with the Council prior to project implementation. (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001(j)(3).)

COMMENTS REGARDING DELTA PLAN POLICIES AND POTENTIAL CONSISTENCY CERTIFICATION

The following section describes the Delta Plan regulatory policies that may apply to the project based on the available information in the NOP. This information is offered to assist Yuba County Water Agency (Yuba Water) in preparing environmental documents that could be used to support a Certification of Consistency for the project.

General Policy 1: Detailed Findings to Establish Consistency with the Delta Plan

Delta Plan Policy **G P1** (Cal. Code Regs., tit. 23, § 5002) specifies what must be addressed in a Certification of Consistency by a project proponent of a project that is a covered action. The following is a subset of policy requirements which a project shall fulfill to be considered as consistent with the Delta Plan:

Mitigation Measures

Delta Plan Policy **G P1(b)(2)** (Cal. Code Regs., tit. 23, § 5002(b)(2)) requires covered actions not exempt from the California Environmental Quality Act (CEQA) must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018 (unless the measures are within the exclusive jurisdiction of an agency other than the agency that files the Certification of Consistency), or substitute mitigation measures that the agency finds are equally or more effective. These mitigation measures are identified in Delta Plan Appendix O and are

available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

If the project SEIR identifies significant impacts that require mitigation, Yuba Water should review Appendix O and include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan or identify substitute mitigation measures that the agency finds are equally or more effective.

Best Available Science

Delta Plan Policy **G P1(b)(3)** (Cal. Code Regs., tit. 23, § 5002(b)(3)) states that actions subject to Delta Plan regulations must document use of best available science as relevant to the purpose and nature of the project. The Delta Plan defines best available science as “the best scientific information and data for informing management and policy decisions.” (Cal. Code Regs., tit. 23, § 5001 (f).) Best available science is also required to be consistent with the guidelines and criteria in Appendix 1A of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>). A future certification of consistency for the project should describe how best available science was applied in project evaluations and decision making.

Adaptive Management

Delta Plan Policy **G P1(b)(4)** (Cal. Code Regs., tit. 23, § 5002(b)(4)) requires that ecosystem restoration and water management covered actions include adequate provisions for continued implementation of adaptive management, appropriate to the scope of the action. This requirement is satisfied through a) the development of an adaptive management plan that is consistent with the framework described in Appendix 1 B of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1b.pdf>), and b) documentation of adequate resources to implement the proposed adaptive management plan. The Yuba Accord is a water management project, and as such, a future certification of consistency for the project should include an adaptive management plan that is consistent with Appendix 1 B requirements.

Water Resources Policy 1: Reduce Reliance on the Delta through Improved Regional Water Self-Reliance

Delta Plan Policy **WR P1** (Cal. Code Regs, tit. 23, § 5003) provides that “[w]ater shall not be exported from, transferred through, or used in the Delta” if *all* three factors – set forth in subdivisions (a)(1), (a)(2), and (a)(3) – apply. Subdivision (a)(1) provides that a project may not proceed if one or more water suppliers that would receive water as a result of the project have failed to adequately contribute to reduced reliance on the Delta and improved regional self-reliance consistent with the requirements of subdivision (c)(1). Subdivision (a)(2) specifies that the project may not proceed if the failure to reduce reliance has significantly caused the need for the export, transfer, or use. Subdivision (a)(3) specifies that the project may not proceed if the export, transfer, or use would have a significant adverse environmental impact in the Delta.

The project proposes to extend the existing water transfer program. The State Water Resources Control Board’s (SWRCB) WR 2008-14 (Order) approving the existing long-term transfer in 2008 states that water reaching the Delta would be available for use by the California Department of Water Resources (DWR) to provide salinity and water quality controls within the Delta or to export from the Delta at either the Clifton Court Forebay or the Jones Pumping Plant for use within the State Water Project (SWP) or Central Valley Project (CVP) service areas. As part of a future certification of consistency for the project, Yuba Water should describe how each water supplier receiving water from the project is consistent with the requirements set forth in subdivision (c)(1) and provide quantitative data in support. (Cal. Code Regs, tit. 23, § 5003(c)(1).) Yuba Water should further address the conditions of subdivisions (a)(2) and (a)(3). Ultimately, the certification of consistency should be supported by substantial evidence in the record. Including this data within the SEIR will provide an opportunity for public review and comment regarding these matters.

Water Resources Policy 2: Transparency in Water Contracting

Delta Plan Policy **WR P2** (Cal. Code Regs., tit. 23, § 5004) requires the contracting process for water from the SWP and/or the CVP be done in a publicly transparent manner consistent with applicable policies of the DWR and the Bureau of Reclamation (Reclamation). The project SEIR should document the planned contracting process and describe how Yuba Water will conduct contracting business in a transparent manner with the public. The Council would also like to receive draft

JoAnna Lessard

Extension of the Lower Yuba River Accord Water Transfer Program

September 12, 2023

Page 6

and final versions of the agreements listed as components of the project in the NOP when they are available.

Ecosystem Restoration Policy 1: Delta Flow Objectives

Delta Plan Policy **ER P1** (Cal. Code Regs., tit. 23, § 5005) requires the SWRCB's Bay Delta Water Quality Control Plan flow objectives to be used to determine consistency with the Delta Plan. The project would continue a long-term water transfer program, extending the timeframe of pumping through the Delta. The SEIR should analyze and document how the project may impact or alter Delta flows that are subject to meeting the Bay Delta Water Quality Control Plan flow objectives.

CEQA REGULATORY SETTING

For each resource section in which a Delta Plan policy is applicable, the SEIR's description of the regulatory setting should include the Delta Plan and a reference to the specific applicable regulatory policy or policies.

CLOSING COMMENTS

As Yuba Water proceeds with design, development, and environmental impact analysis of the project, the Council invites Yuba Water to engage Council staff in early consultation (prior to submittal of a Certification of Consistency) to discuss project features and mitigation measures that would promote consistency with the Delta Plan.

More information on covered actions, early consultation, and the certification process can be found on the Council website, <https://coveredactions.deltacouncil.ca.gov>. Council staff are available to discuss issues outlined in this letter as the Yuba Water proceeds in the next stages of its project and approval processes. Please contact James Edwards at James.Edwards@deltacouncil.ca.gov with any questions.

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer