



DELTA STEWARDSHIP COUNCIL
A California State Agency

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December 1, 2014

Mr. Brad Hubbard
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RE: Proposed Long-Term Water Transfers EIS/R

Dear Mr. Hubbard:

The Delta Stewardship Council (Council) welcomes the opportunity to comment on the Long-Term Water Transfers Environmental Impact Statement/Environmental Impact Report (EIS/R) evaluating the potential impacts of alternatives to help address the Central Valley Project (CVP) water supply shortages (Project), being prepared jointly by the U.S. Bureau of Reclamation (Reclamation) and the San Luis & Delta-Mendota Water Authority (SLDMWA). The Council is an independent California state agency tasked with furthering California's coequal goals for the Delta through the implementation of the Delta Plan, a comprehensive, long-term Delta management plan. As defined in the California Water Code section 85054, the State's coequal goals include providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The Delta Plan highlights that north-to-south water transfers across the Delta can be an important tool for improving water supply reliability and includes several recommendations to identify and enhance opportunities for water transfers in furtherance of the coequal goals. The Plan also calls for improving water transfer procedures.

Even as the Council and Delta Plan support water transfers, they are only one important component for increasing water supply reliability and must be part of a larger suite of actions and projects. The Council has defined what the achievement of a more reliable water supply for California means:

- (a) Better matching the state's demands for reasonable and beneficial uses of water to the available water supply. This will be done by promoting, improving, investing in, and implementing projects and programs that improve the resiliency of the state's water systems, increase water efficiency and conservation, increase water recycling and use of advanced water technologies, improve groundwater management, expand storage,

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall 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."

– CA Water Code §85054

and improve Delta conveyance and operations. The evaluation of progress toward improving reliability will take into account the inherent variability in water demands and supplies across California;

- (b) Regions that use water from the Delta watershed will reduce their reliance on this water for reasonable and beneficial uses, and improve regional self-reliance, consistent with existing water rights and the State's area-of-origin statutes and Reasonable Use and Public Trust Doctrines. This will be done by improving, investing in, and implementing local and regional projects and programs that increase water conservation and efficiency, increase water recycling and use of advanced water technologies, expand storage, improve groundwater management, and enhance regional coordination of local and regional water supply development efforts;
- (c) Water exported from the Delta will more closely match water supplies available to be exported, based on water year type and consistent with the coequal goal of protecting, restoring, and enhancing the Delta ecosystem. This will be done by improving conveyance in the Delta and expanding groundwater and surface storage both north and south of the Delta to optimize diversions in wet years when more water is available and conflicts with the ecosystem are less likely, and limit diversions in dry years when conflicts with the ecosystem are more likely. Delta water that is stored in wet years will be available for water users during dry years, when the limited amount of available water must remain in the Delta, making water deliveries more predictable and reliable. In addition, these improvements will decrease the vulnerability of Delta water supplies to disruption by natural disasters, such as, earthquakes, floods, and levee failures.

The 2009 legislation that created the Council also provided the Council with regulatory authority over certain types of activities undertaken by local or state agencies, called covered actions, and requires that covered actions be consistent with the Delta Plan as cited in Water Code section 85225 *"A state or local public agency that proposed to undertake a covered action, prior to initiating the implementation of that covered action, shall prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and shall submit that certification to the council."* The Council developed new regulations governing covered actions, which became effective on September 1, 2013, and included them in the Delta Plan. The water transfers that are identified in EIS/R may be considered covered actions. Typically the lead CEQA agency determines if a proposed activity is a covered action and would then file a certification of consistency with the Council. The Council strongly encourages all state and local agencies who propose to approve, fund, or

carry out an action in the Delta, consult with the Council as early in the project's development as possible, to ensure the project is consistent with the Delta Plan.

The Council submits the following comments on the EIS/R:

- **The Council suggests that SLDMWA, on behalf of its participating member agencies as well as the Contra Costa Water District (CCWD) and East Bay Municipal Utility District (EBMUD), file a certification of consistency with the Council on the program of water transfers covered by this EIS/R and indicate in the EIS/R that these transfers are covered actions.** Water Code section 85057.5(a) defines a covered action as:

...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;*
- 2. Will be carried out, approved, or funded by the state or a local public agency;*
- 3. Is covered by one or more provisions of the Delta Plan;*
- 4. Will have a significant impact on the 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.*

It appears that water transfers identified in the EIS/R meet the definition of a covered action. The preparation of the EIS/R indicates the Project meets the definition of a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code, the water transfers will take place at least partially in the Delta, will be undertaken by the participating agencies, will have a significant beneficial impact on water supply reliability, and implicate the following two regulatory policies that cover proposed water transfers through the Delta:

WR P1 (23 CCR section 5003) - Reduce Reliance on the Delta through Improved Regional Water Self-Reliance. This policy covers a proposed action to export water from, transfer water through, or use water in the Delta

WR P2 (23 CCR section 5004) – Transparency in Water Contracting. This policy covers:

1. With regard to water from the State Water Project, a proposed action to enter into or amend a water supply or water transfer contract subject to California Department of Water Resources Guidelines 03-09 and/or 03-10 (each dated July 3, 2003), which are attached as Appendix 2A; and

2. With regard to water from the Central Valley Project, a proposed action to enter into or amend a water supply or water transfer contract subject to section 226 of P.L. 97-293, as amended or section 3405(a)(2)(B) of the Central Valley Project Improvement Act, Title XXXIV of Public Law 102-575, as amended, which are attached as Appendix 2B, and Rules and Regulations promulgated by the Secretary of the Interior to implement these laws.
- **The EIS/R should acknowledge the Delta Plan and its regulatory policies.** As previously discussed, the Council's regulations apply to covered actions where water suppliers export water from, transfer water through, or use water in the Delta; and covered actions that include entering into or amending water supply or water transfer contracts. Therefore, the Council, and its role with respect to covered actions, should be included in the appropriate sections of the EIS/R.
 - **The EIS/R "Purpose and Need/Project Objectives" section of the EIS/R should include a quantitative assessment of the need for water transfers to help identify other possible reasonable alternatives.** CEQA requires the project objectives describe the underlying need for and purpose of the project. The EIS/R states the Project's objectives as:
 - Develop supplemental water supply for member agencies during times of CVP shortages to meet existing demands.
 - Meet the need of member agencies for a water supply that is immediately implementable and flexible and can respond to changes in hydrologic conditions and CVP allocations.

However the EIS/R does not state what the water supply demand is for the participating agencies, nor does it state if that demand is changing over time, rather it merely identifies a list of potential buyers without any indication of the demands of those buyers. The EIS/R does describe how the member agencies' water supply from the CVP is variable, even with the use of water transfers. Table 1-1 indicates that the average CVP water supply allocation for the 2000 to 2014 period was 54% of contracted amounts for irrigation use and 83% of contracted amounts for municipal and industrial uses. Irrigation allocation was a full 100% only once during this period. Table 1-3 indicates that water transfers to SLDMWA member agencies occurred in 60% of the years between 2000 and 2014 though the amounts varied from several thousand acre-feet to over 169,000 acre-feet in 2009.

Are the participating agencies' demands variable and able to adjust to a decrease in supply? Then potential alternatives to reduce demand in lieu of increasing supply

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should also be considered. Or are the participating agencies' water supply demands constrained only by their contracts and the ability of the federal and state projects to deliver water? Understanding the demand on the Delta as a water supply is important. It is California'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. Each region that depends on water from the Delta watershed shall improve its regional self-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 section 85021).

- **The EIS/R does not analyze the impacts of water transfers during periods when the state and federal water projects are unable to meet existing Delta water quality objectives.** In January 2014, Reclamation and the Department of Water Resources jointly filed a Temporary Urgency Change Petition (TUCP) for their water right permits and licenses for the state and federal water projects in response to extreme drought conditions in California. They requested temporary modification of requirements included in the State Water Resources Control Board's Revised Decision 1641; specifically the TUCP requested modifications to the requirement to meet the Delta Outflow Objective. The EIS/R does not analyze the potential impacts of water transfers on Water Quality (Chapter 3.2), Aquatic Resources (Chapter 3.7), Terrestrial Resources (Chapter 3.8), or any other potential Delta impact under these extreme conditions. Given that the current drought may continue into the period of time covered by the EIS/R and is likely to be a reoccurring event, the document should include an analysis of the impacts under extreme hydrologic conditions.

If you have any questions or would like to discuss the comments presented here, please feel free to contact me or my staff, Kevan Samsam at kevan.samsam@deltacouncil.ca.gov or (916) 445-5011. We look forward to engaging with Reclamation and its local partnering agencies on opportunities to further California's coequal goals and provide a more reliable water supply.

Sincerely,



Cindy Messer
Deputy Executive Officer

Cc: Frances Mizuno