

Date

BDCP/California WaterFix Comments
P.O. Box 1919
Sacramento, CA 95812

SUBJECT: Delta Stewardship Council Comments
Bay Delta Conservation Plan Recirculated Draft Environmental Impact
Statement/Environmental Impact Report

The Delta Stewardship Council (Council) appreciates the opportunity to provide the following comments on the July 2015 Bay-Delta Conservation Plan/CAL Water Fix Partially Recirculated Draft Environmental Impact Statement/Report (Recirculated draft EIR/S). As the Legislature found in enacting the Delta Reform Act of 2009 (Act), the Sacramento-San Joaquin Delta watershed and California's water infrastructure are in crisis and existing Delta policies are not sustainable. The current drought illustrates this crisis. After decades of study, decisions on improved Delta conveyance need to be made promptly to further the coequal goals established by the Act and enshrined by the Council in the 2013 Delta Plan.

As you know, the Council has been closely watching the development of BDCP since 2010, exercising our consultative and responsible agency roles by commenting on the BDCP's Revised Notice of Preparation, the 2012 and 2013 administrative drafts of BDCP's EIR/S, and the 2013-14 draft EIR/S. Sections of the recirculated draft EIR/S reflect your agency's responsiveness to prior suggestions from the Council and others. Examples include adjustments to Sacramento River diversion facilities that reduce impacts to nearby communities, expanded discussion of impacts to water quality, improved assessment of impacts that may affect Delta wildlife and fish that also rely on habitats downstream in San Francisco Bay, and an improved assessment of cumulative impacts of conveyance improvements and other conservation measures together with other water management actions affecting Bay-Delta water supplies. We thank you for these improvements.

The Council has undertaken its review of the recirculated draft EIR/S: 1) to identify important issues that we believe will need to be more adequately addressed for the BDCP/WaterFix EIR/S to meet the requirements of the California Environmental Quality Act (CEQA) and the Delta Reform Act (see Water Code section 85320); and 2) to gain an improved understanding of how the California WaterFix initiative – if it is ultimately selected by the Department of Water Resources (DWR) as the project -- will further the goals established in the Act, achieve consistency with the Delta Plan's regulatory policies and carry out the plan's recommendations.

We recognize that the Council eventually may hear an appeal of DWR's determination that the Water Fix is consistent with the Delta Plan. Should such an appeal occur, the Council will be relying on DWR's certification of consistency as well as its administrative record supporting its certification; the Council's comments on the Recirculated draft EIR/S will not have a pre-decisional effect on the Council's determination with regard to any possible future appeal.

The first attached document was prepared by Council staff working with our consultant team from ARCADIS. It provides our comments on how the recirculated draft EIR/S addresses key CEQA requirements and the unique EIR/S requirements specified in the Delta Reform Act. The second attachment is the report on the recirculated draft BDCP EIR/S prepared by the Delta Independent Science Board (ISB), which we reference and make part of the Council's comments to the draft EIR/S. The ISB completed its review pursuant to Water Code section 85320(c), which directs it to review the BDCP's EIR/S and submit its comments to the Council and Department of Fish and Wildlife. The ISB's recommendation that the final EIR/S should use best available science, while not required by CEQA, may facilitate DWR and DFW's use of best available science for purposes of the Natural Community Conservation Plan Act and/or certification that the project is consistent with the Delta Plan's regulatory policy requiring use of the best available science (23 CCR 5002(b)(3)) and decisions about the project by DWR and other agencies. As you consider the ISB's comments, please respond as if they had been submitted by the Council.

The attachments are generally organized according to CEQA requirements and the requirements of the Delta Reform Act. The requirements often overlap, however, and we have tried not to repeat comments made in one area even though they may apply to other areas as well. Key points include:

- Delta Reform Act requirements. Our comments suggest several additional improvements to address the requirements of Water Code section 85320(b)(2) concerning the BDCP's EIR/S's review and analysis of important Delta resources.
- Effects on opportunities to restore habitats in the Cosumnes-Mokelumne high priority habitat restoration area. The new Alternatives 4A (California WaterFix), 2D and 5A, while reducing impacts on Delta communities and their residents' quality of life, also propose new features, including a new forebay and reusable tunnel material storage site, barge landing, and temporary access road adjoining Snodgrass Slough and an outlet tower/safe haven and temporary access road on the McCormack Williamson Tract. These features' compatibility with opportunities for habitat restoration within this area, as called for by the Delta Plan's regulatory policies (CCR 5007), should be assessed.

- Better mitigating impacts to water quality, wetlands and other aquatic habitats, and the unique values of the Delta. Adverse effects of the California WaterFix to some of the Delta's unique values may be unavoidable, but better mitigation can reduce harm to agriculture, recreation, communities, aesthetics, and cultural resources, so that the magnitude of change is more compatible with protection of the Delta as an evolving place.

As you know, Council staff meets regularly with WaterFix staff to discuss Council comments and issues of concern, and we have considered your feedback in preparing these comments. We appreciate the pledge that the final EIR/S and related documents will address several key issues raised in the prior comments of the Council and the ISB on the draft EIR/S. These include:

- The adaptive management process, including monitoring and collaborative science.
- Flow criteria and the water available for other beneficial uses (Water Code section 85320 (b)(2)(A)).
- The potential effects of climate change, including sea level rise and changes in precipitation and runoff, on conveyance alternatives considered in the EIR, including their operation (Water Code section 85320 (b)(2)(C)).
- Sacramento and San Joaquin River flood management (Water Code section 85320 (b)(2)(D)).
- The resilience and recovery of Delta conveyance alternatives in the event of catastrophic loss by earthquake, flood, or other natural disaster (Water Code section 85320 (b)(2)(F)).

The Council supports successful development and implementation of conveyance improvements that fulfill the Delta Reform Act's requirements and the Delta Plan. We offer the opportunity for your staff to meet with ours for additional details on any of the comments in the attachments. Through consultation between our agencies, we believe the comments we offer can be addressed satisfactorily. We look forward to working with you over the coming months as you complete the final BDCP/WaterFix EIR/S. Please contact Dan Ray at (916) 445-4294 if you would like to discuss these comments further.

Sincerely,

Randy Fiorini, Chair
Delta Stewardship Council