

## **Exhibit B**

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### STATEMENT OF EXEMPTION CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

#### Proposed Amendments to California Code of Regulations, Title 23, Section 5001(dd)(3) and Delta Plan Water Reliability Recommendation 15

#### Introduction

The Delta Stewardship Council (“Council”) has prepared an Addendum<sup>1</sup> to the *Programmatic Environmental Impact Report for the Delta Plan* (State Clearinghouse No. 2010122028, May 2013) (“PEIR”), which addresses the proposal to extend the Council’s 2013 determination that water transfers of one-year or less in duration (“single-year water transfers”) do not have significant adverse impacts on achievement of the coequal goals within the meaning of the Delta Reform Act, Water Code section 85000 *et seq.* (the “Delta Reform Act”). As fully described in Section 2 (*Project Description*) of the Addendum,<sup>2</sup> the proposed amendments would extend the determination within the Delta Plan’s implementing regulations that single-year water transfers occurring on or before December 31, 2016 do not have significant adverse impacts on the coequal goals, and therefore do not fit the statutory definition of a covered action. The Addendum also discusses proposed amendments to Delta Plan Water Reliability Recommendation 15 (“WR R15”). Together, these actions constitute the Proposed Project that is the subject of this Statement of Exemption.

#### Project Description

Subsection 5001(dd)(3) of the Delta Plan Regulations<sup>3</sup> (“Subsection 5001(dd)(3)”) contains the Council’s determination that single-year water transfers occurring on or before December 31, 2016 do not have a significant impact on achievement of the coequal goals, and therefore do not fit the statutory definition of “covered action” in Water Code section 85057.5. (See Water Code section 85057.5(a)(4).) Accordingly, through December 31, 2016, single-year water transfers are not required to file a certification of consistency with the Delta Plan, because that requirement only applies to covered actions. Without the proposed amendments, single-year water transfers occurring after the December 31, 2016 sunset date would be subject to the requirement to certify consistency with the Delta Plan provided that they meet all the statutory criteria for a covered action.

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<sup>1</sup> *Addendum to the Delta Plan Programmatic Environmental Impact Report* (September 2016) (“Addendum”).

<sup>2</sup> The Addendum and all references cited in Section 7 of the Addendum are incorporated by reference herein,

<sup>3</sup> The regulations pertaining to Consistency With Regulatory Policies Contained in the Delta Plan are found at California Code of Regulations, Title 23, Section 5001 *et seq.* (“Delta Plan Regulations”).

The Council took this approach toward single-year water transfers because, at the time it was developing the Delta Plan, it had substantial evidence that single-year water transfers could have a significant impact on the coequal goals, as well as substantial evidence that single-year water transfers would not have a significant impact on the coequal goals. Thus, the Council attempted to strike a balance by both exempting single-year water transfers from review for the limited period of time between the adoption of the Delta Plan in May 2013 and December 31, 2016, and including language in Subsection 5001(dd)(3) that expressed the Council's intent to consult with the Department of Water Resources (DWR), State Water Resources Control Board (SWRCB), and stakeholders about measures that could limit procedural impediments to single-year transfers while protecting water rights and environmental interests.

The Council also adopted Delta Plan recommendation WR R15, which encourages DWR and the SWRCB to work with stakeholders to develop and propose measures that would satisfy these criteria. The consultation process described in Subsection 5001(dd)(3) was carried out, as described in Section 3.2 (*Review of Single-year Water Transfers for Potential Changes in the Delta Plan*) of the Addendum.

The proposed amendments would revise Subsection 5001(dd)(3) as follows to remove the sunset provision and statement of intent to consult with the DWR, SWRCB and stakeholders:

*(dd) "Significant impact" for the purpose of determining whether a project meets the definition of a "covered action" under section 5001(j)(1)(D) means a substantial positive or negative impact on the achievement of one or both of the coequal goals or the implementation of a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta, that is directly or indirectly caused by a project on its own or when the project's incremental effect is considered together with the impacts of other closely related past, present, or reasonably foreseeable future projects. The following categories of projects will not have a significant impact for this purpose...*

*(3) Temporary water transfers of up to one year in duration. ~~This provision shall remain in effect only through December 31, 2016, and as of January 1, 2017, is repealed, unless the Council acts to extend the provision prior to that date. The Council contemplates that any extension would be based upon the California Department of Water Resources' and the State Water Resources Control Board's participation with stakeholders to identify and recommend measures to reduce procedural and administrative impediments to water transfers and protect water rights and environmental resources by December 31, 2016. These recommendations should include measures to address potential issues with recurring transfers of up to 1 year in duration and improved public notification for proposed water transfers.~~*

The proposed amendments also would revise Delta Plan recommendation WR R15, as follows, in order to encourage the DWR, SWRCB, and California Department of Fish and Wildlife (DFW) to memorialize certain interagency procedures adopted on a temporary basis in response to recent drought conditions:

Enhanced Interagency Cooperation, Review and Reporting of Cross-Delta Water Transfers Improve Water Transfer Procedures (WR R15). The California Department of Water Resources and the State Water Resources Control Board should work with stakeholders to identify and recommend measures to reduce procedural and administrative impediments to water transfers and protect water rights and environmental resources by December 31, 2016. These recommendations should include measures to address potential issues with recurring transfers of up to 1 year in duration and improved public notification for proposed water transfers. In coordination with the California Department of Fish and Wildlife, should memorialize in writing by December 31, 2016, procedures that build upon, and make routine, the drought-related, enhanced level of interagency cooperation and review of proposed cross-Delta water transfers. The procedures should promote increased efficiency and flexibility, while ensuring the following: (1) the protection of water rights and environmental resources; and (2) transparency and accountability, including sharing of relevant information and standardizing public reporting on cross-Delta water transfers.

### **General Rule Exemption**

Section 15061(b)(3) of the Guidelines for the California Environmental Quality Act (“CEQA Guidelines”)<sup>4</sup> states “the general rule that CEQA applies only to projects which have a potential for causing a significant effect on the environment. Where it can be seen with a certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity will not be subject to CEQA.”

While the Council prepared an Addendum to the PEIR for purposes of full disclosure and to document the consultation process, it can be seen with a certainty that there is no possibility that the proposed amendments may have a significant effect on the environment. That is because the Proposed Project would continue to exempt single-year cross-Delta and/or in-Delta water transfers from the covered action process; therefore, no change from existing conditions would occur. Single-year water transfers were not classified as covered actions before the Delta Plan was adopted, have not been classified as covered action since the Delta Plan was adopted, and would continue to be excluded from the definition of covered action. Because the Proposed Project will not result in a change in physical conditions, it will have no significant environmental effects.

Furthermore, as explained in the Addendum, most single-year, cross-Delta transfers must be reviewed and approved by the SWRCB, DWR, and/or the U.S. Department of Interior Bureau of Reclamation (“Reclamation”). Single-year water transfers that are outside the jurisdiction of the SWRCB, but that use DWR’s conveyance infrastructure, must comply with CEQA. Similarly, single-year water transfers that use Reclamation’s conveyance infrastructure must be evaluated under the federal National Environmental Policy Act (“NEPA”) and CEQA. As discussed more fully in the Addendum, only a small percentage of cross-Delta or in-Delta single-year water

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<sup>4</sup> The CEQA Guidelines are found at California Code of Regulations, Title 14, Section 15000 *et seq.*

transfers are not reviewed by the SWRCB, DWR, and/or Reclamation, and most of those transfers are still subject to CEQA review. Finally, if the transfers implicate the California Endangered Species Act or the Federal Endangered Species Act, they would require consultation with DFW or the U.S. Fish and Wildlife Service and National Marine Fisheries Service. As the Addendum concluded, single-year cross-Delta and/or in-Delta water transfers would not result in new or substantially more severe significant adverse impacts on water resources compared to the conclusions in the PEIR, because there would be no change in existing conditions, and single-year water transfers would continue to be exempt from the definition of a covered action.

### **Conclusion**

The Proposed Project, consisting of amendments to Subsection 5001(dd)(3) of the Delta Plan Regulations and Delta Plan recommendation WR R15, are not subject to CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with a certainty that there is no possibility that the Proposed Project may have a significant effect on the environment.

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