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DELTA STEWARDSHIP COUNCIL

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December 28, 2016

Ted Trimble
Supervising Engineer
Western Canal Water District
P.O. Box 190
Richvale, CA 95974

RE: Notice of Preparation of a Draft Environmental Impact Report – Western Canal Water District and Richvale Irrigation District Water Transfers from 2018 to 2022
SCH #2016112035

Dear Mr. Trimble:

Thank you for the opportunity to comment on the Notice of Preparation (NOP) of the Draft Environmental Impact Report (DEIR) for the potential water transfers from Western Canal Water District (Western Canal) and the Richvale Irrigation District (RID) for the period from 2018 to 2022. The Delta Stewardship Council (Council) welcomes the opportunity to provide initial comments on the NOP as the scope of the DEIR is developed.

Established by the Sacramento-San Joaquin Delta Reform Act of 2009 (SBX7 1), the Council is an independent state agency charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan and its regulatory portions of which became effective on September 1, 2013. As stated in the Delta Reform Act of 2009 (Delta Reform Act), the State has "'Coequal goals' (which) means 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" (Water Code § 85054).

Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain activities that take place in whole or in part in the Delta and Suisun Marsh, which are referred to as "covered actions". The Council exercises that authority through development and implementation of the Delta Plan. State and local agencies are required to be consistent with the 14 regulatory policies of the Delta Plan when carrying out, approving, or funding a "covered action". The Delta Reform Act established a certification process for such covered actions to demonstrate their compliance with the Delta Plan (Water Code § 85022). Because the EIR would likely provide much of the factual basis for a certification of the project's consistency with the Delta Plan, the district's responsibility under Water Code § 85225 should be considered in the list of agencies that expect to use the EIR and the approvals for which the EIR will be used.

Recently, the Council amended the Delta Plan and state regulations to permanently exempt short term, single-year water transfers as a covered action under the Delta Plan. Long-term water transfers such as your proposed project still need to be evaluated on a project by project basis to assess how they should demonstrate Delta Plan consistency.

The NOP project description provided in the State Clearinghouse data base proposes, "to reevaluate effects of water transfers from the Western Canal and Richvale Irrigation District service areas to interested agencies south of the Sacramento-San Joaquin Delta and in the San Francisco Bay Area". The project description also mentions the point of origin is from Butte and Glenn Counties and notes potential transferred to counties south of the Delta; Alameda, Contra Costa, Fresno, Kern, Kings, Los Angeles, Merced, Orange, Riverside, San Benito, San Bernardino, San Diego, San Joaquin, Stanislaus, or Ventura counties. Since the listed potential receiving counties are geographically located south of the Delta, it appears that the water would be physically transferred through the Delta and use State Water Project (SWP) facilities to deliver water. This operation would not be considered a "routine operation" of the SWP, and consequently, not exempt from the Council's certification process. The project description suggests that the project may be within the jurisdiction of the Council and the state's Delta Plan and may be a covered action.

Council staff are available to provide assistance to Western Canal in determining whether the proposed project meets the statutory definition of a "covered action" and, as such, would require a certification of consistency with the Delta Plan. We encourage you to consult with Council staff early in the development of the DEIR to better understand the covered action process and how to ensure the project is consistent with the Delta Plan. The project proponent ultimately determines if their proposed project is a covered action. To assist in that determination, the Council has posted a checklist on our website (http://deltacouncil.ca.gov/sites/default/files/2014/11/2014-11-25-Covered-Actions-Checklist.pdf).

Comments on the NOP

The Delta Plan should be considered in the EIR's discussion of the regional setting and planning context. Any inconsistencies with the Delta Plan should be identified. Council staff have reviewed the available information from the NOP and have preliminarily determined that the following Delta Plan regulatory policies may be relevant to this project.

> **WR P1** policy (23 CCR Section 5003), **Reduced Reliance on the Delta Through Improved Regional Water Self-Reliance**, which covers a proposed action to export water from, transfer water through, or use water in the Delta. If this action is deemed a covered action under the Delta Plan, the project would need to be consistent with the Delta Plan's goal to reduce reliance on the Delta, in particular export of water, by improving regional water self-reliance.

ER P1 policy (23 CCR Section 5005), ***Delta Flow Objectives***, which states that "The State Water Resources Control Board's Bay Delta Water Quality Control Plan flow objectives shall be used to determine consistency with the Delta Plan". This policy may apply because the project could impede and/or alter Delta flows that are subject to meeting the Bay Delta Water Quality Control Plan flow objectives. The hydrology modeling proposed for the DEIR could be used to show compliance with this policy.

If the district determines that the project is a covered action, then policy **G P1**, ***Detailed Findings to Establish Consistency with the Delta Plan***, would be triggered. The Certification of Consistency is electronically submitted and would address any germane Delta Plan regulatory policies with detailed findings demonstrating compliance or to explain that the project, although not consistent with the Delta Plan, will still contribute to the overall achievement of the coequal goals. Specific requirements under **G P1** include:

- Since the project is seeking CEQA approval, it must also include applicable feasible mitigation measures under the Delta Plan's Programmatic EIR (certified on May 17, 2013) or substitute mitigation measures that are equal to or more effective to the Programmatic EIR mitigation measures which are listed at: http://deltacouncil.ca.gov/sites/default/files/documents/files/Agenda%20Item%206a_attach%202.pdf.

- The project must document the use of best available science described in Appendix 1A of the Delta Plan regulations (http://deltacouncil.ca.gov/sites/default/files/documents/files/FinalRegText_appendices_07262013.pdf). Essentially best available science means the use of the best information and data, specific to the decision being made and the time frame available for making that decision, to assist management and policy decisions. The process and information used should be clearly documented and effectively communicated to foster improved understanding and decision making.

- GP 1 calls for water management projects to include adequate provisions for continued implementation of adaptive management, appropriate to the scope of the action. DWR and the USBR adaptively manage their exports including conveyance of transferred water, through their compliance, monitoring, and adaptive actions in fulfillment of the SWRCB's Bay Delta Plan and the fish agencies' biological opinions. During an early consultation, we can discuss how describing their actions can fulfill this requirement.

In reviewing the NOP, Council staff also submits the following comments for your review and consideration:

Water Resources

- **How would the project affect groundwater supplies and any pending regional basin Groundwater Sustainability Plans (GSP's)?** The proposed project NOP states an evaluation of cropland idling to provide the water source for the proposed water transfers. How would the project comply with any regionally developed GSP's to address the state's Sustainable Groundwater Management Act requirements? An analysis of the project's water transfer effects on the basin's ability to sustain its groundwater, and ultimately its water balance should be included in the proposed groundwater effects analysis.

Biological Resources

- **How would the project address potential impacts to juvenile salmonids?** The proposed project NOP proposes to transfer a combined maximum of 60,000 acre-feet of water annually during the irrigation season. The Council suggests consulting with the California Department of Fish and Wildlife, National Marine Fisheries, and the US Fish and Wildlife Service to develop a plan to address potential impacts caused by the timing of water transfers. This should be included in the proposed fisheries effects analysis.

- **How would the project address potential impacts to juvenile salmonids due to cumulative effects due to other concurrently timed water transfers?** The proposed project NOP proposes water transfers during the irrigation season, which is typically a time in the year of high water demand. This demand would not only apply to this water transfer project, but also to other existing and proposed water transfer projects. The cumulative effects analysis should consider the impacts of multiple concurrent transfers.

- **How would other species be effected by cropland idling?** The proposed project NOP mentions that idled rice fields could affect habitat for listed species such as the giant garter snake and may also reduce habitat for migratory birds. If the analysis does reflect an impact to these mentioned species, the project proponents should provide mitigation measures to minimize the effects of the project.

Again, Delta Stewardship Council staff appreciates the opportunity to comment on the Notice of Preparation of the project's Draft Environmental Impact Report. We look forward to working with Western Canal Water District and Richvale Irrigation District project managers as this action moves forward.

If you have any questions or would like to discuss the comments presented here, please feel free to contact me or my staff, Anthony Navasero at Anthony.Navasero@deltacouncil.ca.gov or (916) 445-5471.

Sincerely,

on behalf of

Cassandra Enos-Nobriga
Deputy Executive Officer