



DELTA WETLANDS PROJECT

February 1, 2012

Mr. Phil Isenberg, Chair
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA. 95814

RE: Delta Plan Draft EIR

Dear Chairman Isenberg,

Thank you for this opportunity to comment on the Delta Plan Draft Environmental Impact Report. It is a complex document, and it has taken us time to understand its nuances and to form our comments accordingly.

Delta Wetlands Project Description

The EIR's summary of the Delta Wetlands Project in Table 22-1 on page 22-25 is out of date and no longer describes the project correctly. The Semitropic Water Storage District certified the Delta Wetlands Project Final EIR and approved the project in September 2011. We suggest that the project description in the Delta Plan DEIR be replaced with the following project description reflecting the Delta Wetlands FIER project description.

The Delta Wetlands Project would increase the availability of water in the Delta for export or outflow by storing water on two Reservoir Islands (Bacon Island and Webb Tract) and would compensate for wetland and wildlife effects of the water storage operations on the Reservoir Islands by implementing a Habitat Management Plan (HMP) on two Habitat Islands (Bouldin Island and Holland Tract).

In 2007, the Project Applicant entered into a partnership with Semitropic Water Storage District to develop the Project, including storage of exported Project water

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Anson B. Moran, General Manager
1660 Olympic Blvd., Suite 350
Walnut Creek, CA 94596
Telephone (415) 730-5637

in the Semitropic Groundwater Storage Bank and the Antelope Valley Water Bank. Designated Places of Use for Delta Wetlands Project water include: Semitropic Water Storage District; Member Agencies of the Metropolitan Water District of Southern California, the Western Municipal Water District of Riverside County, and select service areas of the Golden State Water Company.

Development of the Reservoir Islands would include strengthening and maintaining 27 miles of levees. Levee improvements are designed to meet or exceed PL84-99 levee geometry standards. Water would be diverted onto Webb Tract and Bacon Island during high-flow periods in the winter months of December-March. The full storage capacity of Webb Tract (100 taf) and Bacon Island (115 taf) can be filled in approximately 1 month with screened diversions of about 1,750 cubic feet per second (cfs) per island. . Project operations will not interfere with senior legal water diversions within the Delta or the existing Central Valley Project (CVP) and State Water Project (SWP) operations.

Project stored water would be discharged into False River (from Webb Tract) and Middle River (from Bacon Island) for export when excess CVP or SWP pumping capacity is available, in the summer and fall months of July-November. During periods of immediate water demand, Delta Wetlands Project water would be directly delivered to designated places of use. If there is no immediate water demand, then Delta Wetlands Project water would be exported and transferred to groundwater banks within Semitropic and to the Antelope Valley Water Bank. Water would not be carried-over in storage on the Reservoir Islands from one year to the next. Any water that could not be exported south of the Delta in a given year would be discharged to increase Delta outflow in the fall months of September-November.

The Habitat Islands would be developed and managed to provide breeding and foraging habitat for special-status wildlife species and other important wildlife species groups. State-of-the-art, positive barrier fish screens would be added to all existing siphons on the Habitat Islands, and would replace the currently unscreened diversions on both of the Habitat Islands. The Project would utilize the existing irrigation water rights to supply water for wetlands and wildlife habitat purposes on the Habitat Islands.

The Semitropic Water Storage District certified the Delta Wetlands Project Final EIR and approved the project in September 2011.

Mitigations Required for Consistency

The EIR's approach to mitigation, and specifically how the EIR purports to impose its mitigation on covered actions, is problematic. The EIR on page 2B-2, line 29 states, "This EIR identifies feasible mitigation measures to reduce the Proposed Project's significant effects on the environment." This is a significant overstatement. At most, the EIR identifies

projects that may be similar to projects that may be proposed as a result of the Delta Plan's provisions. For these potentially similar projects, there were identified and deemed sufficient measures to mitigate their real impacts. The only conclusion supported by the analysis is that for projects of the type that may be encouraged by the Delta Plan, there is a history of successful mitigation of project impacts.

The EIR appears to impose these generic mitigation measures on a covered action regardless of whether the covered action's impacts are significant and whether the EIR's mitigation measures are feasible. The EIR on page 2B-2, line 30 states,

Agencies undertaking covered actions must incorporate these measures¹ into their projects or plans in order for any such covered action to be consistent with the Delta Plan².

/¹ The covered action may include refined versions of this EIR's mitigation measures tailored to match the specifics of the covered action, provided that the refined versions provide a reduction in environmental impact equal to or greater than the measures in this EIR.

/² This would be accomplished through a Delta Plan Policy requiring incorporation of this EIR's mitigation measures into covered actions.

This assumes a policy not in the Delta Plan. Further, the EIR's evaluation of impacts is entirely hypothetical and is so speculative that it provides no basis for imposing specific mitigation measures for the real impacts of actual covered actions. This statement appears founded on the false premise that all covered actions with certain types of effects analyzed in the EIR will have same magnitude of effect (i.e., be "significant impact") and require the same mitigation as the hypothetical projects analyzed in the EIR. The resource sections of the EIR clarify that this requirement is applicable to a covered action's *significant* effects only¹, but this point should be stated more prominently in Section 2B and Section 2.3.

The EIR's imposition of mitigation on covered actions also ignores a tenet of CEQA that a lead agency needs only to adopt *feasible* mitigation. Buried in footnote 4 in the discussion of recommended mitigation measures for *noncovered* actions is the important admission that the EIR's mitigation may not be feasible:

/⁴ Whether the identified mitigation is feasible for any particular project or action proposed by another agency can only be definitively determined at the time that project or action is defined, and would be determined by that agency and not the Council. Where the experience or professional judgment of the preparers of this EIR, or EIRs for analogous projects (see below), identified possible situations where the mitigation might not be feasible, this EIR so notes and concludes that the associated impact would be significant and unavoidable, even if the mitigation would be feasible in the majority of situations.

¹ For example, the EIR impact analyses include the following text: "Any covered action that would have one or more of the significant environmental impacts listed above shall incorporate the following features and/or requirements related to such impacts."

Accordingly, the requirement that covered actions adopt the EIR's mitigation measures should be deleted or substantially rewritten with the caveats that the measures are *recommended* and that it is the lead agency's responsibility to determine whether they are applicable to the project and are feasible.

With specific reference to the Delta Wetlands Project, the DEIR's cumulative impacts analysis draws conclusions about project impacts and appropriate mitigation measures that are not supported by the Delta Wetlands Project Final EIR. As just one example, the DEIR states that the Delta Wetlands Project might have Williamson Act impacts. In fact, there are no Williamson Act impacts. The Delta Wetlands Project is procedurally ahead of the Delta Plan and has completed a Final EIR that fully analyzed project impacts and identified appropriate mitigation measures. The Delta Plan EIR has not identified anything in the Delta Plan that would aggravate these impacts. Had it done so, the burden of mitigation would fall on the Delta Plan. The DEIR should clarify that the suggested mitigation measures are suggestive rather than prescriptive as we requested above, or the analysis of Delta Wetlands Project impacts should be conformed to our FEIR.

Pre-Decisional

The Delta Plan needs to be very clear that it is not pre-decisional with respect to any specific project or any future determination of that project's consistency with the Delta Plan. With respect to surface water storage, an attempt has been made in Chapter 2A to confine the definition of the "proposed project" to the completion of studies, not the approval or construction of the projects themselves. But the discussion that follows defeats this attempt. It is hard to read the discussion of the projects in Chapter 2A, the mitigations suggested for similar projects in Chapter 2B, and the language cited above on page 2B-2 as anything other than a pre-determination of consistency with the Delta Plan. If that is not the intent, it needs to be made explicit that specific, real projects independently have to comply with CEQA and bear the burden of mitigating their project impacts. The discussion of impacts and mitigations in Chapter 2B needs to be used only to assess the impacts of the Delta Plan, not to assess impacts of or the sufficiency of mitigation measures for specific projects that the Delta Plan may encourage or encounter in the future.

Sincerely,



Anson B. Moran
General Manager