



Making San Francisco Bay Better

February 2, 2012

Terry Macaulay
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, California 95814

SUBJECT: Comments on the Delta Plan Draft Environmental Impact Report

Dear Ms. Macaulay:

On November 8, 2011, the Commission received the Delta Plan Draft Environmental Impact Report (DEIR). Thank you for the opportunity to comment.

Although the San Francisco Bay Conservation and Development Commission (Commission) has not reviewed the DEIR, the following staff comments are based on the McAteer-Petris Act, the Suisun Marsh Preservation Act (Marsh Act), the Commission's *San Francisco Bay Plan* (Bay Plan), the *Suisun Marsh Protection Plan* (Marsh Plan), the Commission's federally-approved coastal management program for the San Francisco Bay, and the federal Coastal Zone Management Act (CZMA).

Jurisdiction. The Commission's permit jurisdiction includes all tidal areas of the Bay up to the line of mean high tide or, in areas of tidal wetlands, up to five feet above mean sea level, including all areas formerly subject to tidal action that have been filled since September 17, 1965; and the shoreline band that extends 100 feet inland from and parallel to the Commission's Bay jurisdiction. The Commission also has jurisdiction over certain managed wetlands adjacent to the Bay, salt ponds, and certain waterways, and the Suisun Marsh.

Commission permits are required for placement of fill, construction, dredging, and substantial changes in use within its jurisdiction. Permits are issued when the Commission finds proposed activities to be consistent with its laws and policies. In addition, federal actions (including plans), permits, projects, licenses and grants affecting the Commission's coastal jurisdiction are subject to review by the Commission, pursuant to the federal CZMA, for their consistency with the Commission's federally-approved coastal management program for the Bay.

The Marsh Act grants the Commission regulatory authority to issue marsh development permits in the primary management area of the Suisun Marsh, defined as water-covered areas, tidal marshes, diked wetlands, seasonal marshes, and certain lowland grasslands specified on the Marsh Plan Map. The Marsh Act also established a secondary management area composed principally of upland grasslands and cultivated lands, also specified on the Marsh Plan Map, to serve as a buffer between the primary management area and developed lands outside the Marsh. Within the secondary management area, local governments issue marsh development permits pursuant to a local protection program certified by the Commission, and these permits can be appealed to the Commission.

From our review of the DEIR, the staff has identified the following issues within the Commission's jurisdiction that require analysis in the Final EIR: definition of the secondary planning area for the EIR, habitat protection and restoration, fresh water inflow, climate change, minimizing harmful effects to the Bay, and mitigation.

Definition of the Secondary Planning Area for the EIR. The DEIR references the Notice of Preparation, which defined the secondary planning area as consisting of "the geographical areas that provide water to the Delta (Delta watershed and Trinity River watershed from which water is exported to the Delta watershed) and areas outside of the Delta that use water exported from the Delta." Part of the basis for this definition is found in Section 85302(b) of the Delta Reform Act, which states, "The geographic scope of the ecosystem restoration projects and programs identified in the Delta Plan shall be the Delta, except that the Delta Plan may include recommended ecosystem projects outside the Delta that will contribute to achievement of the coequal goals." The Bay-Delta is a single estuary, and ecosystem restoration projects in the Bay contribute to the health of the Delta ecosystem, one of the co-equal goals. Therefore, the Bay should be included in the secondary planning area for the Final EIR, and the impacts of the Delta Plan on the Bay, including the impacts of the proposed water diversion and conveyance projects on fresh water and sediment flow to the Bay, should be analyzed.

Habitat Protection and Restoration. The DEIR states that the proposed project (i.e., the draft Delta Plan) encourages implementation of habitat restoration projects in five main areas, including the Suisun Marsh (ER R1). The DEIR further states:

The Proposed Project also encourages the Delta Conservancy to develop and adopt criteria for prioritization and integration of large-scale ecosystem restoration in the Delta and Suisun Marsh considering sustainability, best available science, processes for ownership and management of these lands, and development of a habitat credit program for programs implemented in multiple phases (ER R2 and ER R3).

The Commission's laws and policies call for protecting the diversity of habitats in the Suisun Marsh, restoring tidal habitats, and protecting fish, other aquatic organisms and wildlife, particularly threatened and endangered species and their habitats.

More specifically, the Marsh Plan policies state, in part:

The diversity of habitats in the Suisun Marsh and surrounding upland areas should be preserved and enhanced wherever possible to maintain the unique wildlife resource....

Where feasible, historic marshes should be returned to wetland status, either as tidal marshes or managed wetlands. If, in the future, some of the managed wetlands are no longer needed for private waterfowl hunting, they should be restored to tidal or subtidal habitat, or retained as diked wetland habitat and enhanced and managed for the benefit of multiple species....

Ongoing large-scale efforts to restore Bay wetlands have great potential to benefit the entire estuary, including species of concern, yet these projects could inadvertently be adversely affected if Delta management actions, such as restoring Delta islands, result in the capture of sediments that would otherwise flow to the Bay. We request that the Final EIR include analysis of sediment dynamics throughout the whole system, including potential impacts on the Bay that may result from management actions or projects proposed in the Delta Plan.

Fresh Water Inflow to the Suisun Marsh and the Bay. The DEIR states that the draft Delta Plan encourages the State Water Resources Control Board to develop, implement, and enforce updated flow requirements for the Delta and high-priority tributaries in the Delta watershed that would likely result in a more natural flow regime in the Delta and Delta tributaries, and reduced export of water from the Delta. The DEIR further states that the flow objectives would likely provide increased Delta outflows in the winter, spring, and fall months, and increased Delta inflows from the Sacramento and San Joaquin rivers in the winter and spring months. These types of flow changes could increase the presence of freshwater in the Delta in the winter, spring, and fall months. They could also reduce Delta outflows in the summer months, which could lead to increased salinity in the western Delta at those times.

The Delta Reform Act calls for the Delta Plan to promote options for new and improved infrastructure relating to water conveyance in the Delta, storage systems, and for the operation of both to achieve the coequal goals (Water Code section 85304). The DEIR states:

Construction [and operation] of large surface water storage reservoirs..., or water supply reliability actions that modify operations of the [state and federal water projects], or other water systems, might affect special-status species depending on the extent to which the operation influences the flows in connecting rivers or streams. Changes in surface water storage operations could influence the timing and magnitude of flows and water temperature in downstream water bodies used by special-status species. Changes in flow in rivers that are tributary to the Delta might also influence the flow, currents, and temperature and salinity gradients in the Delta. These changes could reduce the quality and suitability of aquatic habitats for special-status fish species such as delta smelt.

The draft Delta Plan does not include any regulatory policies or recommendations regarding Delta conveyance because conveyance options are currently being analyzed separately through the Bay Delta Conservation Plan (BDCP) process. However, the DEIR briefly summarizes current proposals in the BDCP. The DEIR states:

Physical improvements associated with BDCP-related ecosystem restoration and enhancement and large Delta conveyance facilities (including canals, forebays, and intakes/diversions), in addition to the Delta Plan, could potentially increase interference with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors.

The Bay Plan and Marsh Plan policies call for adequate freshwater inflow to the Bay and Suisun Marsh (i.e., Delta outflow). Bay Plan findings state, in part, that "conserving fish, other aquatic organisms and wildlife depends, among other things, upon availability of ...proper fresh water inflows, temperature, salt content, water quality, and velocity of the water."

Water Supply and Quality Finding 2 in the Marsh Plan states, "Today the most important factor in Marsh water quality is salinity. Slough salinities are presently determined by fresh water inflow, which dilutes the saltwater carried into the Marsh by tidal action from the ocean. The most important source of fresh water inflow to the Suisun Marsh is the outflow from the Sacramento-San Joaquin River Delta."

The Marsh Plan recognizes that the Suisun Marsh, located where salt water and fresh water meet and mix, contains "the unique diversity of fish and wildlife habitats characteristic of a brackish marsh."

Marsh Plan policies state, in part:

Water quality standards in the Marsh should be met by maintaining adequate inflows from the Delta.

To address these policies, we recommend that the Final EIR include analysis of the fresh water flow needs of the entire estuary, not just the Delta. This includes the need for peak flows that transport sediment and nutrients to the Bay, increase mixing of Bay waters, and create low salinity habitat in the Suisun Marsh, Suisun Bay, San Pablo Bay and the upper part of central San Francisco Bay. The potential impacts on freshwater flows of new water infrastructure for both storage and conveyance should be included in this analysis.

Climate Change. The Bay Plan requires the design and evaluation of any tidal restoration project to include an analysis of the effect of relative sea level rise. The DEIR states:

Effects of sea level rise on tidal marsh and riparian vegetation depend on the potential for sediment and organic accretion (material buildup), and on the opportunity for the marsh to expand landward, while the shoreline erodes (Orr et al. 2003). Substrate accretion in freshwater tidal marshes is expected to be able to keep pace with at least moderate levels of sea level rise due to organic accretion, but brackish and salt marshes are more dependent on sediment supply for accretion to keep pace with sea level rise (Orr et al., 2003; Callaway et al., 2007). Overall, a loss of tidal marshes is expected, because in many cases an opportunity for landward migration of the marsh does not exist.

The Final EIR should note that risk of levee breaches and wetland habitat loss in the Suisun Marsh will increase over time due to accelerating sea level rise and high rates of subsidence in the managed wetlands. Restoration of managed wetlands that are not yet highly subsided would create opportunities for tidally restored wetlands to accrete sediment and eventually support tidal marsh. Restoration sites around the edge of the Suisun Marsh may have the potential for sea level rise resiliency, if they are allowed to flood adjacent uplands over time so that wetlands can migrate landward. Conversely, the Final EIR should discuss the risks to viability of proposed restoration efforts posed by climate change, including sea level rise.

Minimize Harmful Effects to the Bay. The proposed plan would need to be consistent with all applicable Bay Plan and Marsh Plan policies. Therefore, the Final EIR should address other applicable Bay Plan policies, including a discussion about the Commission's regulatory requirements governing the protection of the Bay's natural resources, including fish, other aquatic organisms, and wildlife, and certain habitat needed for their protection, including tidal flats and marshes and subtidal areas. The Bay Plan policies regarding subtidal areas state, in part, that dredging projects in such areas should be thoroughly evaluated to determine the local and Bay-wide effects such projects would have on bathymetry, tidal hydrology and sediment movement, fish, other aquatic organisms and wildlife; aquatic plants; and the introduction and spread of invasive species. The Bay Plan policies on fish, other aquatic organisms, and wildlife, state that marshes, mudflats, and subtidal habitat should be "conserved, restored, and increased." According to the Bay Plan policies on tidal marshes and tidal flats, and subtidal areas, all projects subject to Commission consideration should also be sited and designed to minimize or avoid adverse resource impacts at these areas. Furthermore, the Commission must consult with and give appropriate consideration to the state and federal resource agencies, and not authorize any project resulting in the "taking" of a listed species unless the appropriate authorization has been issued by the resource agencies.

Mitigation. In the event that projects and activities described in the Delta Plan that take place within the Commission's Bay, Primary Management Area, or certain waterway jurisdiction, or federal activities described in the Delta Plan that will affect the coastal zone as defined in the Commission's federally approved coastal management program, would result in adverse environmental impacts on San Francisco Bay, including the Suisun Marsh, that cannot be avoided, mitigation measures will be required. The Commission's policies regarding mitigation state, in part, that "projects should be designed to avoid adverse environmental impacts to [the] Bay" and, further, that "[w]henver adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable....[and] measures to compensate for...impacts should be required."

Thank you for the opportunity to comment on this DEIR. If you have any questions regarding this letter or the Commission's policies, please call me at (415) 352-3660 or email me at jessicad@bcdca.gov.

Sincerely,



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Coastal Planner

JD/gg

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