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**Contra Costa County**

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To the Delta Stewardship Council
Sent via email to: eircomments@deltacouncil.ca.gov

**Subject: Comments on the Draft Delta Plan Program Environmental Impact Report**

Dear Stewardship Council:

Contra Costa County staff has reviewed the *Draft Delta Plan Program Environmental Impact Report*. We appreciate the opportunity to review the Draft EIR and hope the comments in this letter will be useful to the Delta Stewardship Council.

Some of our comments are general, dealing with the Draft EIR (DEIR) as a whole. Other comments are specific to particular sections or pages of the document. We start off with the general comments and then move to the specific ones. You will note that in some of the comments, where we quote excerpts from the DEIR, we have added our own emphasis through **bold** type to call attention to specific statements or concepts.

**General comments**

1. The Delta Plan and its DEIR would benefit from further work on the specifics of the plan. The proposed project and its alternatives are too vague to adequately identify or evaluate the environmental impacts. We suggest that the Council continue to work on the substance of the project description – identifying what projects and programs it calls for – and then reissue an environmental document. In many instances throughout the document, the DEIR states that the specific number and location of projects that comprise the Delta Plan is unknown and therefore specific impacts cannot be determined. Acknowledging this uncertainty, the DEIR then states that most impacts likely will be significant, even though the actual impacts cannot be determined because the projects themselves are unidentified. Later in this letter we will provide some specific instances where we believe this is particularly problematic and falls short of CEQA requirements. The lack of specific information in the DEIR makes it impossible for decision-makers to make an informed decision on the best alternative.

Large-scale regional plans (and their EIR alternatives) can be built from specifics. For example, regional transportation planning agencies such as the Sacramento Area Council of Governments, the San Joaquin Council of Governments, and the Bay Area's Metropolitan Transportation Commission develop regional transportation plans that are built from many specific recommended transportation improvements in specific locations. The program-level EIRs on these plans offer meaningful conclusions about the likely environmental impacts that will occur because the plans -- and the alternatives -- are developed from specific recommendations. The Council should follow this approach in developing the Delta Plan and EIR.

2. A better-defined plan also would enable the Council to develop measurable targets or criteria for meeting the objectives of the Delta Plan. So far as one can determine from the DEIR, the only quantifiable targets associated with meeting the Plan's objectives relate to maintaining or increasing total agricultural acreage, and income from agriculture, recreation, and tourism. Absent a detailed program to maintain and improve Delta levees, a program that would likely have substantial beneficial impacts on Delta flood risk, it is not clear how these targets can be achieved. The 5th Staff Draft Delta Plan (on which the DEIR is based) does not include such a program. Notably missing from the DEIR is any effort to analyze whether the plan or any of the alternatives under study would meet the co-equal goals as intended under the Delta Reform Act. Measurable evaluation criteria also would enable decision-makers to see whether the proposed project is the environmentally superior alternative, compared to the other alternatives. Without some quantifiable criteria it is difficult to discern the environmentally superior alternative.

3. The DEIR also would benefit from further examination of whether, and how, the Delta Plan is consistent with State Water Code and the Delta Reform Act in terms of reducing reliance on the Delta. Water Code § 85021 provides the policy of the State *"is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency"*. Based on our reading of the DEIR, the Delta Plan relies more heavily on the Sacramento-San Joaquin Delta than on local water conservation efforts. The DEIR should first identify the projects under consideration for the Delta Plan and then explain how these projects and the Delta Plan itself will facilitate achieving the target reduction in water use, as required by statute.

4. The DEIR should explain how the plan will implement conservation measures for agricultural water use, as suggested in Contra Costa County's response to the Notice of Preparation (NOP). The Delta Reform Act 2009 requires the Delta Plan to establish conservation efforts. Eighty percent of California's managed water is used by agriculture. One effective means of increasing the State's water supply is to reduce our agricultural water consumption on water intensive crops. The Delta Plan should evaluate this strategy and quantify how many acre-feet per year of water this could save the State. There are numerous sources on this topic, such as Pacific Institute's *"More with Less: Agricultural Water Conservation and Efficiency in California: A Special Focus on the Delta"* (2008). At the end of this letter we have attached a graph from the Pacific Institute report that illustrates the potential water savings from various agricultural conservation strategies. At a minimum, measures aimed at significantly reducing agriculture-related water consumption should be included in the mitigation measures enumerated in the DEIR. However, we prefer that such measures be incorporated into the Delta Plan itself as additional policies.

5. The DEIR does not adequately explain how the Delta Plan ensures that water supply for local water users in the Delta area is not reduced or degraded, particularly in the south and central Delta. Ideally, water would only be exported south during flood stages and stored for later use, rather than drawing water from an already stressed, overused source year round. Section 2A discusses three northern California water storage projects. The Delta Plan should identify future projects for local storage capabilities and determine how much capacity these would have; these in turn would be included in the DEIR analysis.

6. We suggest the DEIR include additional mitigation measures such as agricultural use of drip irrigation and recycled wastewater, and residential use of dual flush toilets, low flow shower heads, etc. The DEIR should also identify the areas where these will be in use and estimate how much water this will save per year.

**Comments on specific chapters and/or pages**

Section 2A – Project Description

7. Pursuant to CEQA Guidelines § 15126.4(a)(2), mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. As part of our review of the Draft EIR we have reviewed the regulatory framework established by the Delta Reform Act. Based on our review of these documents we question whether the mitigation measures enumerated in the DEIR are truly enforceable. If the measures are not enforceable, then the DEIR is flawed in claiming that they are feasible measures. Many of the measures can be enforced by the individual local entities who will implement the specific projects. This means the mitigation measures could be useful in the project-specific EIRs that will be performed on the individual projects. The use of these measures as mitigations in the Delta Plan DEIR seems questionable.

Two sections of the DEIR provide especially pertinent information on this issue. According to Section 1.1, the Council does not exercise direct review and approval authority over covered actions to determine their consistency with the regulatory policies in the Delta Plan. Instead, the Council serves as an appellate body. Section 2B 2.3 states that agencies undertaking covered actions must incorporate the DEIR's mitigation measures into their projects or plans in order for any such covered action to be consistent with the Delta Plan[2] (footnote 2, found on page 2B-2, states, *"This would be accomplished through a Delta Plan Policy requiring incorporation of this EIR's mitigation measures into covered actions."*). Based on these DEIR sections, as well as our prior discussions with Council staff, our understanding is as follows:

- The Council would become directly involved with a covered action only if an appeal was filed regarding a local agency's determination of consistency with the Delta Plan. In the event of such an appeal, the Council would have the final say in whether the covered action is consistent with the Delta Plan. If no appeal is filed, the Council has no involvement in covered actions.

- The Delta Plan does not contain a policy requiring incorporation of the DEIR's mitigation measures. (The closest policy in terms of subject matter, Policy G P1, states in pertinent part, *"All covered actions must be fully transparent by disclosing all potentially significant adverse environmental impacts and feasible mitigations of those adverse impacts."* We note that there is a significant difference between requiring disclosure of feasible mitigation measures and requiring incorporation or adoption of feasible mitigation measures.)

If our understanding is incorrect, we would welcome clarification from the Council. If our understanding is correct, then it appears that the Council would not be able to compel or require incorporation of the mitigation measures found in the DEIR into a covered action unless the covered action is appealed to the Council. Unlike the Department of Fish and Game or the Coastal Commission, both of which have permitting authority, the Council could not withhold issuance of a permit, make mitigation measures conditions of a permit, agreement or other approval, or take similar actions to ensure incorporation of mitigation measures, other than on appeals cases. Given the Council's lack of authority aside from appeals cases, it appears that if a local agency submitted a written certification of consistency with the Delta Plan and failed to incorporate adequate mitigations, but no appeal was filed, then the local agency could carry out the project without incorporating the mitigation measures listed in the DEIR and the Council would have no ability to enforce the mitigations. If this is the case, then it cannot be claimed that the mitigation measures in the Draft EIR are fully enforceable as part of this program-level EIR. If our understanding of the regulatory framework is correct, then the inability to ensure

enforcement of the proposed mitigation measures seems to be a fundamental flaw that would require revision of the DEIR.

8. In Section 2.2.1.7, Page 2A-23 lines 38-40, the DEIR states that Project policies *"encourage water use efficiency and conservation programs to improve regional self-reliance and reduce reliance on the Delta"*. What actions does the Delta Plan take to *"encourage"* these results? Water Code § 85300 provides that *"The Delta Plan shall promote statewide water conservation, water use efficiency, and sustainable use of water"*. The DEIR should include its own water use efficiency and conservation measures, rather than relying on other agencies to implement these in the future.

9. The DEIR should indicate how the Delta Plan encourages *"implementation of ecosystem restoration"* as stated numerous times in the document. By stating throughout the DEIR *"actions encouraged by the Proposed Project... could include..."*, agencies and the public are left wondering if these actions will eventually occur or not. The word *"could"* should be replaced with *"shall"* in as many places as possible, if in fact the Council is recommending that these actions should be implemented. The DEIR also should identify the environmental impacts if these actions do not occur, and how the Delta Plan will ensure they will occur to equally offset construction impacts which might also occur.

10. In Section 2.2.2.4, on Page 2A-33, line 39, the sentence *"Some of the properties are in public ownership or are protected for conservation purposes, including Prospect Island, Liberty Island, portions of* ***Decker Island****, and portions of Calhoun Cut..."* implies these areas are part of the Cache Slough complex. However, Decker Island is further south on the Sacramento River and is not part of the Cache Slough complex.

11. Still in Section 2.2.2.4, on Page 2A-35, line 30, the DEIR says *"Most of the Yolo Bypass is managed by the USACE and Central Valley Flood Protection Board. These agencies do not allow construction within the floodway that would increase the base flood elevation* ***(designed for 100-year flood protection)****"*. The DEIR needs to discuss global climate change and its effect on rainfall-runoff and flood flows. Runoff is likely to become more intense (higher flood flows) and today's estimates of the 100-year flood levels may no longer be valid.

12. In Section 2.2.2.3.1 on Page 2A-37, line 1 discusses Surface Water Intakes/Diversions with Fish Screens. The largest diversion in the Delta, the intake to the State Water Project's Clifton Court Forebay, is unscreened. The Central Valley Project's Jones Pumping Plant is also inadequately screened to protect threatened and endangered fish species. This should be acknowledged in this *Fish Screens* paragraph and elsewhere. Otherwise the reader will think this section only refers to the much smaller Delta agriculture diversions. The Proposed Project should call for installation of state-of-the-art screens at both these facilities, or demonstrate why these measures would be infeasible or ineffective.

13. The description in Section 2.2.2.3.1 on Levees, Weirs and Gates is too vague. The DEIR should describe in detail which physical barriers are affecting fish passage and recommend actions to remove some or all of them as part of the Proposed Project.

14. On page 2A-38, line 6 provides *"Action 9: Continue investigating potential parasite(s) as a means to control invasive clam or mussel populations"*. The bullet should state *"continue investigating <u>the benefits and possible dangers of introducing</u> potential parasite(s)..."* Introducing parasites could have other unintended adverse impacts on the Delta ecosystem.

15. In Section 2.2.3, Page 2A-40, line 1 et seq., the document notes that the Delta Plan does not direct the construction of specific projects, nor would projects be implemented under the direct authority of the Council. However, the Proposed Project seeks to improve water quality by **encouraging various actions** which, if taken, could lead to construction and/or operation of various capital facilities including conveyance facilities, treatment plants, and wells, among others. The Proposed Project actions should also seek to improve water quality by encouraging higher flows on the San Joaquin River (to partially restore some of the assimilative capacity of this once fast flowing, but now almost stagnant, river), as well as actions to increase Delta outflows, including increased off-stream storage. While these actions are mentioned elsewhere in the context of water supply reliability and ecosystem restoration, these should also be listed as important actions to improve Delta water quality. For example, the extension of Los Vaqueros Reservoir will help improve the quality of water delivered to Contra Costa Water District and potentially other Bay Area water agencies.

16. In Section 2.2.3.1.1, the section starting on Page 2A-41, line 34 should also specifically cite and describe the State's Antidegradation Policy. According to the SWRCB website, this policy, which is formally known as the *Statement of Policy with Respect to Maintaining High Quality Waters in California* (SWRCB Resolution No. 68-16), restricts degradation of surface and ground waters. In particular, the policy protects water bodies where existing quality is higher than necessary for the protection of beneficial uses. Under the Antidegradation Policy, any actions that can adversely affect water quality in all surface and ground waters must (1) be consistent with maximum benefit to the people of the State, (2) not unreasonably affect present and anticipated beneficial use of the water, and (3) not result in water quality less than that prescribed in water quality plans and policies. Furthermore, any actions that can adversely affect surface waters are also subject to the Federal Antidegradation Policy (40 Code of Federal Regulations [CFR] section 131.12) developed under the Clean Water Act.

Resolution 68-16 states that *"it is the policy of the State that the **granting of permits and licenses for unappropriated water** and the disposal of wastes into the waters of the State shall be so regulated as to achieve highest water quality consistent with maximum benefit to the people of the State ……. " **[emphasis added]**. Resolution 68-16 also resolves that: (w)henever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies."* This antidegradation policy therefore applies not only to waste discharge requirements, but also to water quality degradation under water right permits and licenses.

17. On Page 2A-43, line 4, the status of Total Maximum Daily Load (TMDL) objectives for Mud Slough, which receives water from the Grassland Bypass Project, should be discussed.

18. Section 2.2.6 states funding will come from beneficiaries and stressors, but is vague on actual funding sources. Contra Costa County's response to the NOP asked for cost estimates and funding to be included in the DEIR, and for alternatives to taxpayer-paid restoration to be considered. The Proposed Project recommends and encourages other agencies to establish funding mechanisms. The DEIR should estimate the total estimated cost of the Project and indicate whether all funding will come from non-general fund sources. Before the total cost of the Project can be estimated, the Project must be defined in far more specific terms than the Delta Plan has been defined to date, as our first comment indicated.

19. Contra Costa County's response to the NOP also inquired when the Delta Plan would undergo evaluation through the NEPA process, as indicated by the NOP. We did not see this information in the DEIR.

Section 3 – Water Resources

20. The DEIR should include a detailed discussion of the State of California's Area of Origin statutes and the Delta Protection Act of 1959. These served at the time as guarantees that the Central Valley Project and State Water Project would not export water that was necessary for the people in the areas of origin of California's water supply and in the Delta, and necessary to protect the Delta ecosystem.

21. A Supplemental Delta Plan EIR should be prepared and released for public review and comment once the Bay-Delta Conservation Plan (BDCP) is completed. The present version of the DEIR makes numerous assumptions about the likely BDCP proposed project, and actions to be taken by the SWRCB regarding Delta flow objectives, which may not eventuate. As a result, the current DEIR cannot address the potentially serious impacts of the BDCP on the Delta. This relates to our comment #1, that it would have better served the public and the Delta if the Stewardship Council had continued to work on the Delta Plan to better define it, before moving to the environmental review process.

22. In Section 3.1, Page 3-3 states *"It is unclear where these facilities would be located. While it is unclear where the Proposed Project or the alternatives will have effects outside the Delta, this section* ***discusses*** *generally* ***discusses*** *water resources in the Delta, Delta watershed, and areas outside the Delta that use Delta water."* In addition to the extra use of the word *"discusses,"* we point out that even though the location of potential facilities to be *"constructed, modified, or re-operated in the Delta, Delta watershed, or areas located outside the Delta that use Delta water"* is not known, the DEIR must still estimate and disclose the potential adverse environmental impacts of these facilities to the extent possible. If the Delta Plan is encouraging construction of these facilities, the DEIR should make recommendations on locations to the extent possible and disclose the environmental impacts. If the DEIR analysis finds there are adverse impacts, the Delta Plan should also require full mitigation of those impacts, or discourage those specific facilities.

23. In Section 3.3.2, the DEIR should also describe how much water is stored during the winter and spring as snow pack (not just how much can be stored in the surface and groundwater reservoirs). The Draft EIR should also disclose how much this snow pack storage will change as a result of global climate change.

24. On Page 3-5, Figure 3-2 and other maps should also show Contra Costa Water District's (CCWD's) three central and south Delta intakes, and possibly CCWD's Mallard Slough intake, as well as CCWD's Los Vaqueros Reservoir. The Los Vaqueros Project is mentioned on page 3-14 at line 20.

25. In Section 3.3.3.4.1, Page 3-15 should provide a more accurate discussion of regulatory constraints on export pumping. This section says the *"CVP and SWP water supplies in the Delta has been reduced over the past 20 years through implementation of water quality objectives, water rights decisions, and biological opinions.* ***These activities limit the time during which freshwater flows can be conveyed from the Sacramento River through the Delta to the south Delta CVP and SWP pumping plants.*** *The ability of the CVP and SWP to convey water from the Delta is further limited by the capacity of conveyance and storage facilities in areas outside of the Delta that use Delta water".*

The document should clarify that the water quality objectives, water rights decisions and biological opinions limit the amount of Delta water that can be exported via the south Delta CVP and SWP pumping plants. They do not directly limit the conveyance of freshwater across the Delta. In fact, operation of the south Delta export pumps reduces Delta ouflow and causes reverse flows which increase seawater intrusion into the Delta. The seawater mixes with San Joaquin River water, Delta island drainage, and freshwater from the Sacramento River

and other Delta tributaries, degrading Delta water quality and the quality of the exported water. Thus the pumps themselves contribute to degradation of the freshwater supply from the Sacramento River and how much of that freshwater is exported.

26. In Section 3.3.4.1.1, graphs from the *State Water Resources Control Board Delta Flow Criteria Report* of actual and estimated unimpaired San Joaquin flows should be included in this section. These graphs illustrate in various forms how the flows in the San Joaquin River have been seriously reduced through the operations of upstream dams and diversions.

27. In Section 3.3.4.2.2, on Page 3-26, footnote 5 states *"EC is directly related to salinity by* ***a simple site-specific factor conversion****. Higher EC means higher salinity"*. While footnote 5 applies to a discussion of the eastside streams that flow directly to the Delta, the DEIR should make clear that conversion from EC to salinity is more complex than a single relationship when there are multiple sources. In the interior Delta, the ionic composition of the water is a mixture of seawater, Sacramento River water and agricultural water from the San Joaquin Valley and Delta islands. The conversion from EC to salinity or chloride, calcium, sulfate or other constituent concentrations will vary depending upon the percentage of water from each of these different sources. The percentages vary not only with location but also vary with time, e.g., by season and whether it is a wet year or a dry year.

28. Table 3-8, on Page 3-48 *("Water Supplies in the San Francisco Bay Area")* needs a footnote listing which agencies receive the Central Valley Project water and which agencies receive the State Water Project water.

29. In Section 3.3.5.2.4, Page 3-49, line 17 says *"Delta water is used by CCWD through diversions to Los Vaqueros Reservoir, water diverted at Mallard Slough, and* ***water diverted from the San Joaquin River".*** However, Contra Costa Water District diverts water in the central and south Delta from Rock Slough off Old River, Old River at Highway 4, and from Victoria Canal. None of these are considered geographically to be San Joaquin River diversions. The discussion of the *1994 Monterey Agreement* on page 3-54, lines 10 and 11 should also include a discussion of the subsequent Planning and Conservation League lawsuit and its ramifications.

30. In section 3.4.3.1.1, in reference to page 3-79, operation of new on-stream reservoirs can influence the water downstream of the dam when water is released from the reservoir. Los Vaqueros Reservoir, however, is an off-stream reservoir and the majority of the water is released from the reservoir via a delivery pipeline to CCWD's service area. Only a very small amount of water is typically released to Kellogg Creek to meet downstream water right requirements. Los Vaqueros Reservoir is not a useful example of the effect of dam operations on downstream receiving water.

31. In Section 3.4.3.2, on Page 3-82, line 40 through page 3-83, line 9, there is encouragement for the SWRCB to update the Water Quality Control Plan for the San Francisco Bay/ Sacramento-San Joaquin Delta Estuary and that this would result in a more natural flow regime in the Delta and Delta tributaries and reduced export of water from the Delta. Contra Costa County also encourages the SWRCB to develop increased Delta flow requirements to produce a more natural flow regime in the Delta.

32. In this section and elsewhere, the DEIR needs to make clear that while an isolated facility may improve water quality for export contractors, these exports will reduce Delta outflows and allow contaminated San Joaquin water to accumulate in the south and central Delta. This will result in potentially devastating degradation in water quality for the residents of Contra Costa County and the central and south Delta farmers.

There will also be significant impacts on the Delta as a place with respect to recreation. Any discussions of water quality in the context of new BDCP facilities must disclose the changes in water quality for all users of Delta water, not just the export contractors.

33. In Section 3.4.3.5, on Page 3-90, line 14 describes how the Delta Plan *"seeks to protect and enhance the Delta as an evolving place by encouraging various actions and projects"*. This discussion of the Delta as an evolving place gives examples of projects that address two aspects of the Delta as an evolving place. However, Water Code § 85054 states that 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.*** " The discussion needs to make clear that agricultural values and natural resources are also important features of the Delta and must be protected.

Section 4 – Biological Resources

34. A full discussion and analysis of the estuarine habitat standard X2 needs to be included in this section on biological resources. There is no mention of X2 in the whole section. The discussion of X2 should include both the SWRCB's February-June X2 standard as well as the Fall X2 requirements in the biological opinions. While there is still some debate regarding Fall X2 requirements, the location of the 2 parts per thousand isohaline remains a key indicator used by biologists to assess the health of the Delta ecosystem.

35. In Section 4.3.2.1.7, the discussion of the return of salvaged fish to the Delta needs to disclose how many of the salvaged fish survive the tanker truck journey to Antioch and the subsequent discharge into predator laden water. The percentage of salvaged fish that survive is very low.

36. In Section 4.3.2.1.10, salinity should be singled out under *"4.3.2.1 Factors Affecting the Delta Ecosystem"* as a key factor. Salinity is only mentioned under Other Water Quality Issues as a locally important attribute of fish habitat. Turbidity and temperature are discussed further under that subsection but not salinity. However, the estuarine habitat objective X2 relates salinity in the western Delta to fish abundance. Salinity is also a factor affecting the abundance of the overbite clam, an invasive species that out-competes resident Delta fish for food (as discussed on page 4-8, line 10). The recent degradation of Delta water quality due to salinity in the fall, and subsequent increases in abundance of invasive species, may have contributed to the Pelagic Organism Decline. Preliminary modeling results for the BDCP suggest the BDCP proposed project as of October 2010 (15,000 cfs isolated facility) will result in further decreases in Delta outflow in the fall with further degradation of Delta salinities. The important role of salinity in determining ecosystem health in the Delta requires a separate detailed subsection.

37. Section 4.3.2.1.11 notes that climate change will result in more rain and less snow. This will greatly reduce the amount of water stored as snow pack and reduce the effective water storage capacity in California. The estimated reduction in snow pack storage and its effect on California's water supply needs to be discussed in more detail.

38. In Section 4.3.3.3, the discussion of the San Joaquin River Watershed should contain discussion of Mud Slough and Salt Slough. Both are westside tributaries to the San Joaquin River and were historically impacted by the high selenium and salinity concentrations from agricultural drainage. Since implementation of the Grassland Bypass Project, the ecosystem habitat in Salt Slough has greatly improved, but Mud Slough continues to be impacted by agricultural drainage. There is also concern that discharges from Mud Slough will impact salmon introduced into the upper San Joaquin River as part of the San Joaquin River restoration

program. These factors affecting the biological resources of the San Joaquin need to be disclosed in the Delta Plan EIR. The EIR for the Grasslands Bypass Project (Reclamation and San Luis & Delta-Mendota Water Authority 2008) and the potential impacts associated with actions to improve the quality of agricultural drainage water are discussed on page 73, line 31, and page 74, line 9, of the Delta Plan EIR.

39. In Sections 4.4.3.5 and 2.2.5 we are unsure what is meant by the construction and/or operation of "*gateways*". The document should define this term. More specificity would be helpful on the references to bicycle facilities as well, such as whether these refer to bike lanes on streets (known as Class II bike facilities) or separate bike paths (Class I bike facilities).

40. As was the case in Section 3, the Section 4.4.3.5 discussion of the Delta as an evolving place gives examples of projects that only address two aspects of the Delta as an evolving place. Water Code § 85054 states that 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.***" The discussion needs to make clear that agricultural values and natural resources are also important features of the Delta and must be protected.

41. In Section 4, page 4-63, the Draft EIR does not adequately explain how it will facilitate a doubling of the population of salmon in the Delta, pursuant to Water Code § 85302. Lines 17-27 of the Draft EIR mentions that special-status fish species, including salmon, might be adversely affected by construction of facilities, release of sediments or acoustic effects. Adverse impacts to salmon or salmonids are also mentioned on page 4-74 lines 37-40, page 4-77 lines 37-46 and page 4-86 lines 1-3. The Draft EIR should indicate how the Delta Plan specifically will minimize these impacts to less than significant, but also ensure salmon populations double due to actions of the projects under the Plan.

<u>Section 4.4.3.1.4</u>

42. In Section 4.4.3.1.4, on Page 4-65, lines 34-37 state "*Construction and operation of facilities, such as water intakes and pumping plants, located along waterways could substantially interrupt migratory wildlife habitat corridors, particularly in riparian zones, and wetland features crossed by migratory bird and mammal species*". Other impacts to wildlife corridors are also mentioned in Section 4. The Draft EIR should provide an adequate explanation of how the Delta Plan establishes functional migratory wildlife corridors pursuant to Water Code § 85302.

43. The alternatives as described in Section 4 do not reflect Contra Costa County's response to the NOP, which suggested substantiating alternatives to allow for the coequal goals to be achieved. Pursuant to CEQA Guidelines § 15126.6 (a) an EIR should include a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project. The Alternatives presented in Section 4 vary only slightly, in comparative emphasis of different elements, and for the most part only vague impacts are mentioned, but not necessarily the actions which cause the impacts. For example; in Alternative 1A, "*Projects to restore the Delta ecosystem would be reduced relative to the Proposed Project and the implementation of flow objectives that could lead to a more natural flow regime in the Delta would not be accelerated*". It is unclear whether ecosystem restoration would be reduced simply to make this different than the Proposed Project, or if there would be certain construction activities which result in reduced ecosystem restoration.

44. According to CEQA Guidelines § 15126.6 (f)(3), an EIR should not consider an alternative whose effect cannot be reasonably ascertained and is speculative. Alternatives 1A, 1B, 2 and 3 all say: *"Because it is not known whether the mitigation measures listed above would reduce impacts to a less-than-significant level…, these potential impacts are considered* ***significant and unavoidable."*** From our review of the Draft EIR it appears that none of these alternatives are reasonable alternatives as defined by the CEQA Guidelines because they all fail to meet one of the two basic requirements for alternatives – to avoid or substantially lessen any of the significant effects of the project.

45. Pursuant to CEQA Guidelines § 15126.6 (f)(2), project locations that would avoid or substantially lessen significant effects need to be considered for inclusion in the EIR. The Sacramento-San Joaquin Delta is not the only source of water for most of the State of California. The Delta Reform Act requires water users become more self-reliant and implement water conservation measures. A genuine alternatives analysis would discuss alternatives that focus on local and regional self-reliance, thereby directly reducing reliance on the Delta. One alternative that deserves analysis is construction of desalination plants in highly populated coastal areas, such as Los Angeles and Orange counties and the Bay Area. It would be meaningful to know what portion of California's population could realistically be served by such plants, and the feasibility of constructing the plants to serve this population, This is the kind of substantive information that allows decision-makers and the public to weigh the relative costs and benefits of the Delta Plan and its alternatives against other methods of delivering potable water. Desalination plants are costly, so the discussion of this strategy would need to include an evaluation of potential funding sources.

Section 6 - Land Use Impacts

46. Page 6-19, line 40 quotes from our General Plan Land Use Element Policy 3-69, but adds specific density limits that are not part of the General Plan Policy being quoted.

47. On Page 6-21, after line 3 there is a missing land use that should be included, as it is part of our General Plan Land Use Policy 3-69. The missing land use category is public purpose uses.

48. On Page 6-21, in lines 25-27, the sentence that starts with the words *"Except for Bethel Island"* should be corrected as follows: *"Except for Bethel Island,* ***Knightsen,*** *~~and an area~~ ~~around~~ Discovery Bay,* ***and Byron,*** *most of the eastern portion of the* ***unincorporated*** *county is outside the ULL (Contra Costa County 2005, p. 3-10, Figure 3-1)."*

49. On page 6-33, Figure 6,-9, the map of *"population centers in the Delta and Suisun Marsh"* shows a number of communities that are not in the Delta or Suisun Marsh (such as Concord, Pleasant Hill, Walnut Creek, Clayton, and Martinez in Contra Costa County). The title of the map should be changed to *"Major Population Centers in* ***and near*** *the Delta and Suisun Marsh."*

50. In Section 6.3.2.2.3, on Page 6-39, lines 3-4 incorrectly state that a new residential subdivision is under construction on Bethel Island. No new subdivisions are under construction on Bethel Island. As the result of a court action, construction had begun on Delta Coves, which is the referenced subdivision, but the developer is in bankruptcy and construction is no longer in progress.

51. In Section 6.4.1, on Page 6-45, line 10 states that certain land use impacts were analyzed for the Delta and Suisun Marsh *"including the six counties in the Delta."* We are aware of five counties in the area legally defined as the Delta. This should be clarified.

52. In Section 6.4.3.2.1, on Page 6-50, lines 31-34 contain an incomplete sentence (the sentence starting with *"Ecosystem restoration activities..."*). This should be corrected.

Section 14 – Hazards and Hazardous Materials

53. In Section 14.4.2.6.1, on Page 14-13, lines 16-17 and lines 25-26 together state that transportation of hazardous materials in Contra Costa County is performed by trucks, and the only hazardous materials transported by railroad are military munitions for the Concord Naval Weapons Station. In fact both of the major freight railroads operating in Contra Costa County carry non-munitions hazardous materials to and from industrial sites in eastern and western Contra Costa County. These include hazardous materials used in the manufacturing of household chemical products and in petroleum refining.

54. In Section 14.5.3.1.5., on Page 14-21, lines 10-15 state that future projects constructed within 2 miles of a public airport *"likely would be subject to the consistency requirements of an Airport Land Use Plan."* If the lead agency for a water project is a state-level agency, they would not be subject to such requirements. Per the State Aeronautics Act, Airport Land Use Plans pertain to local jurisdictions and special districts, but not to state agencies.

55. In Section 14.5.3.2.5, on Page 14-25, lines 38-40 state, once again, that *"It is unclear at this time how implementation of the Proposed Project would result in specific construction activities, including the location, number, capacity, and methods and duration of construction activities."* As noted in earlier comments, this raises doubt as to whether the Delta Plan is ready yet for environmental review. If we can't understand the plan or its alternatives in physical terms, there is little or no value in evaluating it.

56. In Section 14.5.3.1.1, on Page 14-18, line 8 uses the abbreviation *BMP* without any explanation that we could find. Perhaps the explanation is in the chapter and we missed it. *BMP* also is used on page 14-36, in lines 21 and 23. One may assume this stands for "Best Management Practices" but an explanation would be helpful.

57. In Section 14.5.3.6.1, on Page 14-37, lines 16-17 state that the mitigation measures suggested in the preceding paragraph reduce significant impacts to less-than-significant levels *"in most cases."* The document should specify whether this means the mitigations reduce impacts to less-than-significant levels in actual spill events, or only in environmental impact reports. This is an important difference and should be clarified.

58. Page 14-37, line 18 has a sentence that starts out by saying, *"In the unlikely event of a spill...."* The EIR should provide documentation that a spill is unlikely. In our observation, hazardous materials spills are not infrequent and we would not generally describe them as unlikely.

59. The section notes the potential for impacts if hazardous materials are used or released in Delta-related projects within 0.25 miles of an existing or proposed school. It would be helpful if the Delta Plan EIR developed a map showing the locations of all schools that are in (or within 0.25 miles of) the Delta and Suisun Marsh, similar to the Figure 14-1 map that shows the location of registered hazardous materials sites throughout the Delta and Marsh. This map could be useful when specific water projects are planned and sited in the future.

Also, by mapping these locations, the Final EIR might be able to make more definitive statements about the likelihood of hazmat impacts from the Delta Plan, rather than the vague statements contained in the Draft EIR.

Section 16 - Population and Housing

60. On Page 16-2, in lines 10-12, *"Major Sources of Information,"* the population and housing data were apparently compiled from the California Department of Finance. Actual population results for communities covered under the Delta Plan have been available from the U.S. Census 2010. Instead of using the latest U.S. Census data for population, the Draft EIR uses dated and inaccurate Department of Finance population projections.

61. On Page 16-4, in Table 16-2, *"Population: Historical, Existing, and Projected, Delta and Suisun Marsh,"* the 2010 population figure for Contra Costa County and cities is inaccurate. Actual countywide population according to the 2010 Census was 1,049,250 (not 1,073,055).

62. On Page 16-6, lines 2-4, and Table 16-4, *"Population: Historical and Projected, Delta Islands,"* again, due to reliance on dated projections from the CA Department of Finance, the population for Byron Tract significantly under-reports the 2010 population for Discovery Bay. The 2010 Census pegged Discovery Bay's population in 2010 at 13,352. Therefore it would be unreasonable to project the community's population in 2030 at 7,818.

Section 18 - Recreation

63. In Section 18.3.2.2, Page 18-13, lines 30-31 list "high-speed wakeboarding" as a boating activity. We do not believe high-speed wakeboarding exists, and we suggest changing this listing to simply "wakeboarding."

64. As stated on page 18-32 line 4 and page 18-31 lines 3-10 in the Draft EIR, the number and location of all potential projects is not known; therefore project-specific impacts are unknown. Lead agencies would presumably address impacts when future projects are proposed, though this is not guaranteed. Delta Reform Act § 85301 requires the Council to protect, enhance, and sustain recreational values. The Draft EIR should explain how the Delta Plan will ensure recreational values are protected in light of the fact that none of the policies within the Plan (which, as opposed to the recommendations, are the only elements of the Plan that would have the enforceability of law) specifically mention recreational values. The projects in the East Bay Regional Park District's Master Plan that lie within the legal Delta should be considered part of the Delta Plan and assumed in the Draft EIR.

Section 19 - Transportation

65. In Section 19.3.2.1.6 the first sentence is incomplete *("Caltrans has jurisdictions over designed truck routes in.")*

66. The Draft EIR should provide some level of assurance that construction and/or operations-related truck traffic would not be diverted through residential neighborhoods. This may be something that is addressed in an individual project's traffic control plan, but even at the program EIR level, some discussion of this should be included as potential mitigation measures.

67. In Section 19.4.4.1.1, Impact 19-1a: *Effects of Project Construction* talks about the potential short and long term impacts from construction and operation on roadways by projects the Delta Plan could influence. The discussion indicates road closures/relocations may be necessary at certain times. The discussion should mention the need for coordination with local agencies, as well as indicate how these types of actions could be financed.

68. Page 19-22 of the Draft EIR provides the City of Huntington Beach's Huntington Beach Seawater Desalination Project as an example of a project with potentially significant construction related impacts. However, the Draft EIR does not expand on what those impacts are, and says similar mitigation measures were implemented, thus reducing impacts to less than significant levels. We suggest the Draft EIR elaborate on what those constructions related impacts were (for any project-specific example provided) given the fact that impacts could have different degrees of severity depending on the characteristics of any given project area. Local agencies would be better able to gauge a proposed mitigation measure's feasibility if we understood the impacts of the projects the Draft EIR is using as examples. Any suggested mitigation (traffic control plan, etc.) may or may not be appropriate.

69. The Draft EIR should address potential impacts to levee roads resulting from construction/operation activities of the proposed projects and propose appropriate mitigations. A significant portion of the roadway network in Contra Costa County's Delta region consists of levee roads. Outside of Contra Costa County, two state highways traversing the Delta (State Route 4 and State Route 160) are levee roads. These roads do not have the capacity or potential for expansion like surface streets do and options will be limited when levee roads are temporarily closed or impacted during construction of Delta Plan projects.

Sincerely,

John Greitzer
Water Agency staff

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L. DeLaney, County Administrator's Office
Delta Counties Coalition
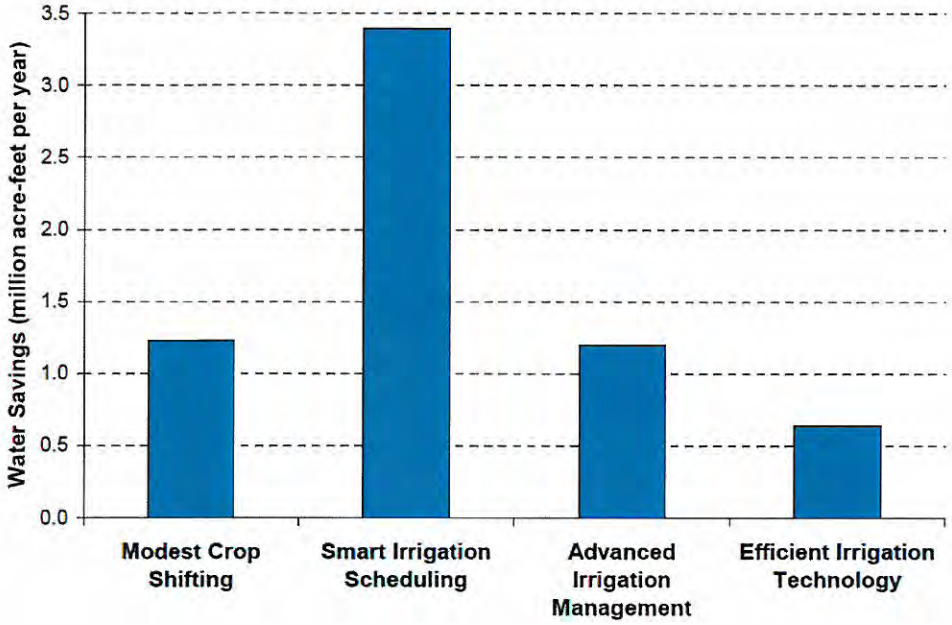
**Figure ES-1. Water Savings by Scenario**