



# CALIFORNIA FARM BUREAU FEDERATION

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Sent via E-mail

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February 2, 2012

Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814  
Attn: Terry Macaulay

Re: Comments on the Draft Environmental Impact Report

Dear Mr. Macaulay:

The California Farm Bureau Federation is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing more than 74,000 agricultural, associate and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

In addition to the attached, more detailed and technical comments, Farm Bureau has the following policy-oriented comments related, less to the Draft Environmental Impact Report (DEIR), than to the underlying Fifth Draft Plan that is the basis of the proposed project.

First, it seems problematic, in terms of compliance with the intent and spirit of the Delta Reform Act, that various aspects of the Plan currently work at cross-purposes. Of particular concern, dominant ecosystem system restoration, instream flow enhancement, quasi-regulatory, and "reduced reliance" aspects of the plan tend to short-circuit and undercut the plan's required water supply reliability, flood protection, and protection of the Delta objectives. This is a major shortcoming that raises questions as to the adequacy of the plan itself to achieve the basic purposes for which it was intended.

Second, while we realize that this, at least partly, due to the embryonic status of the Delta Protection Commission's Economic Sustainability Plan (DSC ESP) at the time the Fifth Draft Plan was finalized for preparation of the DEIR, it remains a grave concern that the Fifth Draft Plan and the DEIR—with their focus on improved boat ramps and

bike trails—completely miss the point of what is properly required in the Delta Reform Act, in terms of true “economic sustainability” and continued vitality of the Delta’s important and overwhelmingly agricultural economy. With the DSC ESP now complete, we are hopeful that the Council’s final iterations of the Delta Plan will include a far more vigorous effort to truly grapple with and meaningfully address the critical issue of “protection and enhancement of the Delta as an evolving place.”

Thank you for the opportunity comment. The remainder of our public comments are set forth in the attached table.

Very truly yours,

A handwritten signature in black ink, appearing to read "Justin E. Fredrickson", with a long horizontal line extending to the right.

Justin E. Fredrickson  
Environmental Policy Analyst

JEF/pkh  
Attachment

California Farm Bureau Federation  
Delta Plan DEIR Attachment  
February 2, 2012

Impact and EIR Section	DEIR's Treatment of Impact and Mitigation
<p>3. Water Resources. 3-1. Violate any Water Quality Standards or Waste Discharge Requirements or Substantially Degrade Water Quality</p>	<p>The DEIR describes the proposed project's impact on "Water Quality Improvement" as "significant" before mitigation, and "less than significant for covered actions," with mitigation.</p> <p>Proposed mitigation measures address only direct construction impacts—not potential long-term impacts to water quality which may result from activities and projects supported by the Delta Plan, including long-term operations of a potential delta conveyance facility, large-scale tidal marsh restoration, and potential, long-term water quality effects of Delta Plan levee and economic sustainability policies.</p> <p>The DEIR's water quality analysis fails to properly assess or propose mitigation measures for potential adverse effects of the proposed project on water velocities, submerged aquatic vegetation, predation, smolt survival, outmigration, and dilution ratios of pollutants, including ammonia from urban waste management plants (which are in turn hypothesized to have potential adverse foodweb effects).</p> <p>In addition to the potential significant adverse impacts on Delta water quality, the mentioned effects could have potentially significant adverse impacts on the Delta Plan's objectives related to a "Reliability Water Supply," "Water Quality Improvement," and "Protection and Enhancement of Delta as an Evolving Place."</p> <p>Because the potential significant impacts of these potential Delta Plan effects are not adequately described or analyzed, there is also no adequate description of potential mitigation measures to avoid or reduce such impacts.</p>
<p>3. Water Resources. 3-2. Substantially deplete groundwater supplies or interfere substantially with</p>	<p>The DEIR describes the proposed project's impact on the Plan's "Reliable Water Supply" objective, and on groundwater and groundwater recharge, as "less than significant," both with and without mitigation.</p>

<p>groundwater recharge.</p>	<p>Proposed mitigation in this category considers only direct construction-related impacts of potential projects. The DEIR’s impacts analysis ignores potential significant impacts of various regulatory or quasi-regulatory aspects and underlying policies of the proposed project. In particular, policies that favor (1) additional dedication of water supplies to instream flow, fishery, and public trust purposes, (2) maximizing regional water use efficiency, (3) further restricting access to imported water supplies from the Delta, and (4) constraining voluntary water markets could all tend to increase reliance on local groundwater and, thus, “substantially deplete groundwater supplies” and reduce groundwater recharge from irrigation return flows and <i>in lieu</i> conjunctive use management and regional groundwater banking.</p> <p>In addition to potential “substantial depletion” of groundwater supplies and interference with groundwater recharge, the DEIR fails to adequately assess and analyze the potentially significant adverse impact of the above-mentioned Delta Plan policies on the Delta Plan’s “Reliable Water Supply” objective.</p>
<p>3. Water Resources. 3-3. Substantially Change Water Supply Availability to Water Users that Use Delta Water</p>	<p>The DEIR describes the proposed project’s impact on water supply availability to Delta water users as “less than significant,” both with and without mitigation.</p> <p>As described above, Fifth Draft Delta Plan policies that currently favor (1) additional dedication of water supplies to instream flow, fishery, and public trust purposes, (2) maximizing regional water use efficiency, (3) further restricting access to imported water supplies from the Delta, and (4) constraining voluntary water markets could all tend to “substantially” (and adversely) affect the availability of Delta water supplies to the water users who currently rely upon them, either in whole or in part, in the south-of-Delta export service areas of the CVP-SWP, upstream of the Delta, and in the Delta itself.</p> <p>In addition, Delta conveyance operations, habitat restoration, Delta Plan levee policies, and altered salinity regimes could “substantially” affect the availability of Delta water supplies to in-Delta water</p>

	<p>users, as well as municipal water users outside of the Delta (for example, in the form of increased chlorides, bromides, and TOC).</p> <p>None of these potential adverse impacts on the availability of Delta water supplies to Delta water users, or on the mentioned Delta Plan objectives, is properly or adequately analyzed in the DEIR, nor does the DEIR propose appropriate mitigation to lessen or avoid these potentially significant adverse effects.</p>
<p>5. Delta Flood Risk.</p> <p>5.1. Substantially Alter the Existing Drainage Pattern of the Site or Area, Including Through the Alteration of the Course of a Stream or River, or Substantially Increase the Rate or Amount of Surface Runoff in a Manner which would Result in Flooding On- or Off-site.</p> <p>5-4. Expose People or Structures to a Significant Risk of Loss, Injury or Death Involving Flooding, Including Flooding as a Result of the Failure of a Levee or Dam.</p>	<p>Policies RR P1 and RR P2 in the Fifth Draft Delta Plan state that “floodways [as defined in statute] shall not be encroached upon nor diminished without mitigating for future flood flows,” but then go on to state that “this policy does not apply to ecosystem restoration projects or any ongoing agricultural or flood management activities unless they significantly decrease the existing level of flood protection.” The plan, however, <i>does not</i> describe what criteria would be used to determine whether an particular activity or feature of the landscape “significantly decrease[s]” an existing level of flood protection, how or when this would be assessed, or what (if anything) the Council would do about it. With respect to “ecosystem restoration,” in particular, this creates a large area of uncertainty, as to what amount of impairment of the floodway would be tolerated or not tolerated, and what specifically would be done to prevent a potential “significant decrease in the existing [or pre-existing] level of flood protection” over time. It also creates significant uncertainty as to what tipes of “ongoing agricultural or flood management activities” either <i>would</i> or <i>would not</i> potentially trigger the “significantly decrease” trigger—and, again, how the Council would make this determination, and what (if anything) it would do about it.</p> <p>Without proper standards or specific and enforceable mitigation, various habitat restoration elements of the Delta Plan, along with potential borrowed habitat elements of the Central Valley Flood Protection Plan and the Bay-Delta Conservation Plan, have potential to “substantially alter drainage” in the Delta and its watershed, and to “substantially increase the rate or amount of surface runoff in a manner which would result flooding on- or off-site,” and to “expose people or</p>

	<p>structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam,” in several ways:</p> <p>First, by reducing system capacity, slowing and backing up flows as a result of unsustainable reforestation and inadequate maintenance of existing floodways; second, through the creation of seepage problems in areas adjacent to flooded islands and seasonally flooded floodplains; third, by impacting existing agricultural and stormwater drainage systems, including ditches, drains, etc.; fourth, by creating “vegetated levees” and, thus, fostering conditions that may be conducive to more frequent and severe levee failures, as a result of burrowing rodents, piping, inadequate inspection, fallen trees, etc.; fifth, by creating opportunities for potential misinformed priorities that fail to protect the integrity of our levee system as a whole, without any adequate technical basis for doing so, and thus foster conditions that may lead to gradual deterioration and potential failure of individual system components, or of certain segments of the system over time (e.g., a potential “domino effect” of island failures in the Delta over time, or comparative weaknesses in rural versus urban levees, relating to potential discrepancies in long-term, public funding priorities and the vagaries of often insufficient on-going public investment in flood protection and system maintenance).</p> <p>While the DEIR’s assessment correctly concludes that the impact of “many” (if not “most”) flood protection- and ecosystem-related projects—whether these occur under the Delta Plan, the Bay-Delta Conservation Plan, or the Central Valley Flood Protection Plan—will likely be “significant,” even after mitigation, the DEIR’s proposed mitigation measures omit certain reasonable and feasible mitigation measures to reduce and avoid these impacts. In particular, proper mitigation should include dedicated funding for on-going maintenance and management of vegetation in floodways and on levees where vegetation is allowed to establish. Additionally (or in the alternative), flood capacity in existing or future bypasses and floodways should be maintained by devising enforceable restrictions, in perpetuity, to limit land uses throughout a majority of the system to flood-compatible agriculture. Where such lands exist (either</p>
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	<p>now or in the future), this can be accomplished through flowage easements on privately-owned lands or lease-back arrangements on state-owned lands, as applicable. This will, in turn, serve to save the state significant expenses associated with active vegetation management (clearing, thinning, dredging, and the like), while at the same generating tax revenues, jobs, food and fiber for the local and state economy, and preventing fundamental flood-habitat conflicts and significant losses of existing flood capacity over time.</p> <p>Farmland impacts associated with potential flood protection actions (e.g., setback levees, bypass expansions, etc., to the extent such actions are undertaken) should be avoided, minimized, or mitigated, first, by conducting planning and siting decisions in collaboration with local interests, landowners and farmers, and local governments; second, through alternative means that <i>do not</i> require taking or acquiring existing agricultural lands; third, by using public lands whenever feasible, before taking or acquiring private lands; fourth, by acquiring lands from willing sellers—again, in cooperation with local interests, farmers and landowners, and local governments—before condemning private lands; fourth, by expressly reserving condemnation as a last resort; fifth, not condemning private property without a clear and compelling public purpose, where there is no alternative means to meet the public purpose on other non-private lands, or through other means; sixth, by establishing, as a matter of policy, that compelling public health and safety concerns related to significant flood risks are the only “public purpose” that would justify condemnation of existing, privately owned farmland—and that any other secondary “multiple use” purposes, in themselves, would be insufficient to justify such a taking of private land by eminent domain, where farming is the established “highest and best use” of such lands; seventh, where it is demonstrated that there is no alternative and private lands are condemned, by acquiring no greater interest than that required to achieve the public purpose, and by otherwise preserving existing economic values and uses of the land as farmland in perpetuity, to the greatest extent possible; eighth, by paying just compensation; ninth, by assisting landowners and farmers farming lands that are placed in</p>
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	<p>floodways to transition and continue to farm the land, in accordance with the changed conditions (including adequate drainage and access and compatible timing of possible, seasonal inundation); tenth, by mitigating the potential, adverse, direct, indirect, and cumulative impacts of any changes in the uses, or in the management of adjacent lands and other lands on remaining farmland (either inside or outside of the floodways).</p> <p><u>Note:</u> The foregoing is an illustrative list, including examples of various important mitigation measures and assurances. It is <i>not</i> an exhaustive, or a definitive list of all desirable avoidance, minimization, and mitigation for potential farmland losses resulting from new flood protection and floodplain management policies supported, “encouraged,” or approved by the Stewardship Council in its Delta Plan.</p>
<p><b>7. Agriculture and Forestry Resources</b></p> <p>7-1. Conversion of Farmland to Nonagricultural Use.</p>	<p>With respect to the project’s potential farmland conversion effects, while the finding of “significance,” both before and after mitigation, is correct, the DEIR’s analysis focuses predominantly on farmland losses as a result of potential direct construction and habitat restoration activities, while overlooking the project’s potential significant farmland impacts, in terms of reduced water supply reliability resulting from potential new regulatory restrictions favored by the Delta Plan or other changes affecting water availability, not only the Delta, but also in areas upstream of the Delta and the export service areas of the CVP/SWP south of the Delta.</p> <p>This includes potential losses of water supply from both surface water and groundwater, from both direct physical losses of existing water supplies, as well as indirect losses or impacts as a result of potential water reallocation (conversion from one use to another), regulations or increased costs of water delivery or use.</p> <p>The analysis is also inadequate in that it makes no attempt to quantify a reasonable estimate or range of the project’s potential farmland conversion impacts from such effects, in order to fulfill the basic informational purposes of an EIR.</p> <p>These criticisms aside, Farm Bureau commends the</p>

	<p>Council on the general tenor and scope of the DEIR’s “Mitigation Measures 7-1.” (See DEIR at ES-24.) While these are, by no means, the <i>only</i> possible methods of mitigating the projects’ potential significant impacts, they <i>do</i> include several of the most important and widely recognized approaches to mitigating a farmland conversion impacts. To wit, those proposed measures are:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Design[ing] proposed projects to minimize, to the greatest extent feasible, the loss of the highest valued agricultural land.</li> <li><input type="checkbox"/> Preserv[ing] in perpetuity other Farmland through acquisition of an agricultural conservation easement, or contributing funds to a land trust or other entity qualified to preserve Farmland in perpetuity (at a ratio of 1:1 to compensate for permanent loss).</li> <li><input type="checkbox"/> Redesign[ing] project features to minimize fragmenting or isolating Farmland.</li> <li><input type="checkbox"/> Reconnect[ing] utilities or infrastructure that serve agricultural uses if these are disturbed by project construction.</li> <li><input type="checkbox"/> Manag[ing] project operations to minimize the introduction of invasive species or weeds that may affect agricultural production on adjacent agricultural land.</li> <li><input type="checkbox"/> Establish[ing] buffer areas between projects and adjacent agricultural land that are sufficient to protect and maintain land capability and agricultural operation flexibility.</li> </ul>
<p><b>7. Agriculture and Forestry Resources</b></p> <p>7-2. Conflict with Existing Zoning for Agricultural Use or a Williamson Act Contract.</p>	<p>The DEIR correctly concludes that the identified impact under the proposed project would likely be “significant,” both before and after mitigation. As mitigation under “Measure 7-2,” the DEIR proposes: (1) “select[ing] a site or redesign a project to avoid land protected by agricultural zoning or a Williamson Act contract; or (2) [l]imit[ing] ecological restoration activities to those</p>

	<p>activities consistent with Williamson Act contracts.” These measures, if implemented, would likely be highly effective in avoiding conflicts with existing Williamson Act contracts. However, they do <i>not</i> address the separate issue of consistency with existing agricultural zoning, which, in the case of a non-conforming or incompatible habitat project, would likely require a conditional use permit. Accordingly, an additional mitigation measure to address potential conflicts with a county’s existing agricultural zoning should be to obtain a conditional use for the county or city government responsible for an area’s zoning.</p>
<p><b>7. Agriculture and Forestry Resources.</b></p> <p>7-5. Involve Other Changes in the Existing Environment That, Because of Their Location or Nature, Could Result in Conversion of Farmland to Nonagricultural use or Conversion of Forestland to Nonforest Use.</p>	<p>(See comments relating to “Measure 7-1” above.)</p>
<p><b>11. Geology and Soils.</b></p> <p>11-6. Operatin of Projects Could Result in Impacts Associated with the Occurrence of Nuisance Water in Adjacent Areas Due to Leakage.</p>	<p>The finding that a “majority of impacts will have less-than-significant impacts,” and that the effect of all covered actions, after mitigation, will be “less than significant,” appears to be unsupported.</p> <p>It is true that the DEIR’s proposed mitigation for subsurface seepage from potential ecosystem restoration under “Measure 11-6” would likely help, significantly, to reduce seepage impacts of such projects—and, in this regard, such mitigation appears to be generally appropriate:</p> <ul style="list-style-type: none"> <li>□ For ecosystem restoration projects that might cause subsurface seepage of nuisance water onto adjacent lands: <ul style="list-style-type: none"> <li>– Perform seepage monitoring studies by measuring the level of shallow groundwater in the adjacent soils, to evaluate the baseline conditions. Continue</li> </ul> </li> </ul>

	<p>monitoring for seepage during and after the project implementation.</p> <ul style="list-style-type: none"> <li>– Develop a seepage monitoring plan if subsurface seepage constitutes nuisance water to the adjacent land.</li> <li>– Implement seepage control measures if adjacent land is not useable, such as installing subsurface agricultural drainage systems to avoid raising water levels into crop root zones. Cutoff walls and pumping wells can also be used to mitigate for the occurrence of subsurface nuisance water.</li> </ul> <p>However, given the scale and magnitude of proposed inundation and habitat restoration under the Delta Plan over time, even full implementation of these measures cannot likely avoid various significant and possibly unavoidable impacts of such projects. Accordingly, the impact on “Flood Risk Reduction” and “Protection and Enhancement of Delta as an Evolving Place” is likely “significant” for a “majority of projects,” and “significant” for “many projects” even <i>after</i> mitigation.</p>
<p><b>14. Hazards and Hazardous Materials.</b></p> <p>14-3. Create Vector Habitat that would Post Significant Public Health Hazard.</p>	<p>Based on a review of the disease vector analyses in past EIRs for three much smaller and generally dissimilar projects (the Los Vaqueros Expansion Project, the Calaveras Dam Replacement Project, and the Davis-Woodland Water Supply Project), the DEIS reaches the conclusion that the potential disease vector impacts of the proposed project would be “less than significant” after mitigation, based specifically on the finding that there is no substantial evidence that this impact would be significant. This conclusion is based on the document preparers “inability to identify a reasonably plausible scenario in which a potential significant impact would occur.”</p> <p>For lack of further evidence, it is at least noteworthy that 19<sup>th</sup> century, pre-reclamation accounts of mosquito infestation in Delta marshes is legend—whereas the projects considered bear little resemblance to the kind of massive habitat restoration that is proposed under the</p>

	<p>Delta Plan.</p> <p>Particularly in an area where human health may be at stake, it seems that the DEIR’s “less than significant” finding is improper, and that the impact, both before and after mitigation, should be “significant.”</p>
<p><b>16. Population and Housing.</b></p> <p>16-1 Induce Substantial Population Growth in an Area, Either Directly or Indirectly.</p>	<p>Reaching a “less than significant” finding across all categories in this area, the DEIR does not consider the possibility that, in the absence of appropriate assurances, public interest balancing, cost-benefit and ability to pay analyses, by potentially increasing the cost of water, actions contemplated under the Delta Plan, in the future, could potentially accelerate reallocation of the water from agricultural to urban use, thus reducing agricultural acreages and food production in the state, and potentially stimulating future urban growth.</p>
<p><b>20. Utilities and Service Systems.</b></p> <p>20-1. Require or Result in the Construction of New Water Treatment Facilities, the Construction or Operation of Which Would Have Significant Environmental Effects or Require the Procurement of Additional Water Supply Entitlements.</p>	<p>Concluding that the potential for such impacts is “less than significant” across all categories, the DEIR does not adequately consider the possibility that removing a substantial proportion of flow on the Sacramento River at the wrong time could potentially reduce dilution and assimilative capacity in the Delta, potentially increase the water quality obligations of dischargers remaining in the watershed, necessitate construction of new water treatment facilities at significant cost to local communities, result in further degradation of biological and foodweb conditions in the Delta, and potentially constrain water users in the Delta watershed to forego or rededicate water supplies to achieve water quality compliance, or to otherwise force such users to find alternate supplies. This is a worst case scenario; still, it remains a possibility. Accordingly, the DEIR should analyze such impacts and proposed appropriate mitigation to avoid, minimize, and mitigate the same.</p>
<p><b>20. Utilities and Service Systems.</b></p> <p>20-5. Require or Result in the Development of New Electricity Generating Facilities or the Expansion of Existing Facilities, the Construction or Operation of</p>	<p>Desalination plants, lost power generation capacity, more pressurized micro- and drip irrigation, as opposed to gravity-fed irrigation, potential increased groundwater pumping from greater depths, and increase emissions of methane and other GHGs from restored wetlands are all potential sources of significant new power consumption and/or increased GHG emissions under the proposed project. It appears that the DEIR has taken no account of the potential significant impacts in reaching its “less</p>

<p>Which Would Have Significant Environmental Effects.</p> <p><b>21. Climate Change and Greenhouse Gas Emissions.</b></p> <p>21-1. Construction and Operations of Projects Could Result in an Increase in GHG Emissions That May Have a Significant Impact on the Environment.</p>	<p>than significant finding” on “Utilities and Service Systems”—and that the DEIR’s analysis of GHGs has focused primarily on water supply reliability infrastructure, in reaching a finding of “significance,” both with and without mitigation, while at the same time largely overlooking potential power impacts of increased water use efficiency, lost power generation, increased groundwater pumping, and methane and other GHG gas emissions from restored wetlands.</p>
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