

DELTA PROTECTION COMMISSION

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Contra Costa County Board of Supervisors

February 2, 2012

Sacramento County Board of Supervisors

Phil Isenberg, Chairman
 Delta Stewardship Council
 980 9th Street, Suite 1500
 Sacramento, California 95814

San Joaquin County Board of Supervisors

Dear Chairman Isenberg,

Solano County Board of Supervisors

Attached are comments from the Delta Protection Commission in regards to the Delta Plan Draft EIR. In addition to the specific comments attached, two observations of the Draft EIR are as follows:

Yolo County Board of Supervisors

Cities of San Joaquin County

1. The proposed project's environmental superiority does not in itself demonstrate consistency with the co-equal goals as stated in the Delta Reform Act of 2009: "[T]he two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place" (Water Code Section 85054).

Cities of Contra Costa and Solano Counties

Cities of Sacramento and Yolo Counties

Central Delta Reclamation Districts

Within the context of the co-equal goals, in order for the proposed project to be the superior alternative it is necessary that it provides the greatest water supply reliability and Delta ecosystem benefits while enhancing the Delta as an evolving place. Using the California Environmental Quality Act (CEQA) framework, the EIR does not evaluate the alternatives along these other two dimensions of the Delta Reform Act. As such, the conclusion regarding the CEQA based environmental superiority of the proposed project is neither a necessary nor sufficient condition to identify the superior alternative. At a minimum these limitations of the Draft EIR are important to highlight in subsequent revisions of the document and ideally subsequent evaluation of alternatives will be augmented to include discussion of both water supply reliability and enhancement of the Delta as an evolving place.

North Delta Reclamation Districts

South Delta Reclamation Districts

Business, Transportation and Housing

Department of Food and Agriculture

Natural Resources Agency

2. The Draft EIR has adopted a static framework to analyze the impact of actions that in many cases will unfold over decades. This leads to potentially misleading constructs with significant implications for assessment of the proposed project's impacts. An example occurs in the review of Cultural Resources (Section 10) where the Draft EIR examines the impact of associated projects' construction and

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operation, but it does not examine the direct impact on cultural resources because of the project's restrictions on investment in agricultural activities, the legacy communities, and the levee system. These restrictions and associated underinvestment could thereby significantly degrade the Delta's cultural resources.

The importance attached to the development of the Delta Plan cannot be over emphasized, not only to achieve the coequal goals, but also to carry out the objective identified by the Legislature in the Delta Reform Act... "to do in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place".

Sincerely,



Don Nottoli
Chair



Michael Machado
Executive Director

Attachment

EIR Comments

1. Necessity and Sufficiency of Environmentally Superior Alternative

The November 2011 Draft Delta Plan Environmental Impact Report (Draft EIR) concludes that the proposed Delta Plan (Proposed Project) is the environmentally superior alternative among the six alternatives evaluated. Setting aside issues regarding assumptions that characterize the alternatives for the moment,¹ it is critical to note that the Proposed Project's environmental superiority does not in itself demonstrate consistency with the co-equal goals as stated in the Delta Reform Act of 2009: "[T]he two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place" (Water Code Section 85054).

Within the context of the co-equal goals, in order for the Proposed Project to be the superior alternative it is necessary that it provides the greatest water supply reliability and Delta ecosystem benefits while enhancing the Delta as an evolving place. Using the California Environmental Quality Act (CEQA) framework the EIR did not evaluate the alternatives along these other two dimensions of the Delta Reform Act. As such, the conclusion regarding the CEQA based environmental superiority of the Proposed Project is neither a necessary nor sufficient condition to identify the superior alternative. At a minimum these limitations of the Draft EIR are important to highlight in subsequent revisions of the document and ideally subsequent evaluation of alternatives will be augmented to include discussion of both water supply reliability and enhancement of the Delta as an evolving place.

2. Reflection of Economic Sustainability Plan

In the next revision of the EIR, the Proposed Project should incorporate the Delta Protection Commission's Economic Sustainability Plan for the Sacramento-San Joaquin (ESP). The subsections on Flood Risk Reduction (Section 2.2.4) and Protection and Enhancement of the Delta as an Evolving Place (Section 2.2.5) need particular attention in this regard. While the Draft EIR includes a description of some recommended actions from the ESP in Section 2.2.5, it is overwhelmingly focused on the California State Parks' *Recreation Proposal for the Sacramento San Joaquin Delta and Suisun Marsh*. As a result, throughout the Draft EIR there is an assertion that preserving and protecting the Delta as an evolving place can be achieved by modest infrastructure and retail development for recreation and tourism. This is not a finding that is tenable with the ESP's analysis. While development of recreation and tourism infrastructure is an important component in the ESP it is not and should not be the sole focus of the Delta Plan in preserving and protecting the Delta as an evolving place.

Nonetheless, the Draft EIR propose and evaluates this constrained perspective throughout: "[T]he Proposed Project seeks to protect and enhance the unique cultural, recreational, natural resources, agricultural values of the California Delta as an evolving place by encouraging various actions, which if taken, could lead to construction and/or operation of: 1) Gateways, bike lanes, parks, trails, and marinas and facilities to support wildlife viewing, angling, and hunting opportunities (construction, maintenance, and use) 2) Additional retail and restaurants in legacy towns to support tourism (construction and use)" (page 2A-52). The ESP clearly highlights the limitation of this perspective and revision of the EIR is strongly encouraged to reflect its systemic perspective on preserving and enhancing the Delta as an evolving place.

¹ For further discussion of this issue see the section on Assessment and Credibility of Alternatives (5) below.

Furthermore, it is suggested that the ESP also be used to inform the Delta Plan and the associated subsection in the Draft EIR on Delta Flood Risk Reduction (Section 2.2.5). The ESP has identified systemic benefits for water conveyance, ecosystem restoration, and the Delta as a place by building and maintaining all Delta levees to a PL84-99 standard and for prioritized development of select levees to a higher Delta specific 'fat levee' standard in order to reduce the threat posed by floods, earthquakes and possible sea-level rise. By emulating the ESP's recommendations on levees, the Delta Plan would significantly address the need for an aggressive program to maintain and improve Delta levees in the face of hazards posed by floods, earthquakes and possible sea-level rise beyond that which is currently in the Proposed Project. In this regard, it is important to note that the ESP's conclusions are consistent with those reached in the Delta Risk Management Strategy Phase Two study.

3. Analysis of Impacts

In the Draft EIR, the BDCP is discussed in Section 23, but it is evaluated as a cumulative project. The Draft EIR identifies a range of alternative concepts and proposals associated with the BDCP that would have a significant impact on the Delta, but these are considered as separate and distinct from the Proposed Project and evaluated alternatives. BDCP is the leading effort in the Delta to provide water supply reliability, but the analogous projects evaluated in the Draft EIR are in no way comparable to the twin tunnel 15,000 cfs isolated conveyance proposal which is currently its leading alternative conveyance proposal. Ignoring this in the analysis of the Proposed Project fundamentally avoids a critical component. Impacts on several resources will be significantly impacted under current BDCP proposals. An example of this type of impact would be found in the discussion of impacts on Water Resources (Section 3). The Proposed Project reports decreased reliance on the Delta will lead to increased water availability to water users in the Delta (Impact 3-3a, page 3-82). However, this conclusion does not account for existing water rights that are superior to contractual rights and the potential water quality impacts generated by an BDCP isolated conveyance facility, where evidence suggests significant changes in salinity profiles across the Delta, but particularly in the south Delta. Similarly, with regard to BDCP ecosystem proposals and water quality degradation (Impact 3-1b, page 3-83) the Draft EIR does not discuss impacts from increased sedimentation resulting from the tidal marsh habitat potentially created under BDCP ecosystem proposals and the negative impact that habitat may have through siltation on municipal water intakes and shipping channels in the Delta.

Separate from the BDCP, there is a general lack of discussion in the Draft EIR of impacts from the energy needs associated with water conveyance. The Proposed Project reports on air quality conflicts as a result of actions for water supply availability under Air Quality in Section 9 (Impact 9-1a, page 9-18). However, these impacts do not include a discussion air quality impacts generated by the energy that provides water supply reliability. Including these emissions is a seemingly significant component of pollutant exposure as well (Impact 9-3a, p. 9-20), which at present is not discussed. Related to the same point, in the discussion of Utilities and Service Systems (Section 20) there is no discussion of the energy and associated water requirements to power the pumps that may be required for conveyance. Lastly, under the discussion of Climate Change and Greenhouse Gas Emissions (Section 21) there is no discussion of the energy and associated water requirements for pumping and conveyance. Inclusion of these real impacts would likely generate further significant impacts that are not at present discussed.

There are other areas in the Draft EIR where additional analysis of impacts seems warranted. These include the analysis of Transportation, Traffic, and Circulation (Section 19) where the analysis asserts that no impact would be made on the regional Congestion Management Plans (Section 19.4.3). However, this seemingly disregards impacts that might occur in goods transport alleviation from the Marine Highway. In the analysis of Public Service impacts (Section 17) evidence from the ESP would suggest that impacts on demand for public services as a result of actions to protect and enhance the Delta as an evolving place (Section 17.4.3.5) should be differentiated between the primary

and secondary zones. This is necessary because impacts on the primary zone are likely to be significant in the context of the limited availability public services in that region and with respect to first responders in particular.

4. Analysis of Dynamics

The Draft EIR has adopted a static framework to analyze the impact of actions that in many cases will unfold over decades. This leads to potentially misleading constructs with significant implications for assessment of the Proposed Project's impacts. An example occurs in the review of Cultural Resources (Section 10) where the Draft EIR examines the impact of associated projects' construction and operation, but it does not examine the direct impact on cultural resources because of the Project's restrictions on investment in agricultural activities, the legacy communities, and the levee system. These restrictions and associated underinvestment could thereby significantly degrade the Delta's cultural resources. Another example can be found in the review of Mineral Resources (Section 13) in which the Draft EIR examines impacts of the Proposed Project and the alternatives' across their construction and operation, but it does not examine the impact on mineral resources because of restrictions on investment in and operation of mineral resource extraction activities. While mitigation discusses the need to ensure access to existing and active mineral resource extraction sites it does not discuss potential loss of access to future sites that would otherwise be viable if not for these restrictions nor the potential loss (albeit counterfactual) of technologies that may otherwise facilitated access to those resources. Lastly, the analysis in the Draft EIR assumes proposed funding and maintenance sufficiency in the future. Given financial uncertainties highlighted as a result of the recent recession this is an assumption that at a minimum should be explicit in the analysis. The consequent significance to relaxing this assumption is illustrated in the discussion of Hazard and Hazardous Materials in Section 14. The Draft EIR in Section 14 assumes and presents an image of vector habitat generation from ecosystem restoration to be unlikely given potential mitigation measures. However this assumes a funding and maintenance dynamic that has not been previously practiced in the Delta and should be mentioned as a potentially significant long-term hazard from ecosystem restoration (Impact 14-3b, p. 14-24).

5. Assessment and Credibility of Alternatives

The process by which the five alternatives to the 5th Staff Delta Plan ("the Proposed Project") were developed is explicit and detailed in Section 2.3.1, but the assumptions that characterize the alternatives create an impression of predetermination in favor of the Proposed Project. Consideration of the project impacts and mitigation occupies 33 pages in the Draft EIR but consideration of the five alternatives occupies only 10 pages in total. This discrepancy largely results from the selected alternatives being variations of the Proposed Project and the differences in the impacts being discussed collectively instead of on a point-by-point basis like the Proposed Project. We would encourage revising the alternatives to more fully differentiate perspectives and to examine each alternative on a point-by-point basis or at least add a discussion where the Proposed Project is similarly discussed collectively. In this regard, we suggest that the revised EIR contain alternatives that better reflect the stakeholders whom they are held to represent.

The issue and implications of these shortcomings in the alternatives is demonstrated in Section 5 on Delta Flood Risk. On the basis of the qualitative assessments made in the Draft EIR, there is essentially no difference between the Proposed Project and the alternatives in terms of Delta Flood Risk. Nonetheless, the Draft EIR concludes that the Proposed Project is superior to the alternatives because they all focus levee investments on only part of the Delta and Alternatives 1A and 1B focus prevention of encroachments into floodplains in only limited parts of the Delta. Seemingly minor modifications to either Alternative 2 or 3 would make them superior to the Proposed Project, but these have not been considered.

Lastly, there is a notable minority of social scientists in the team that developed the Draft EIR. While acknowledging the importance of the team's contribution thus far, it would seem beneficial for subsequent revisions to include additional expertise in the social sciences in order to ensure the Proposed Project and its alternatives fully reflect the co-equal goals.

6. Miscellaneous Issues

- Section 10 – On page 10-13 (line 20-22) Walnut Grove is described as a community that caters primarily to tourism and recreation with encroaching suburban growth altering its agricultural character. While tourism is an important aspect of the Walnut Grove economy, we would encourage future version of the EIR to consult the ESP regarding the character of Walnut Grove today as there is a marked absence of suburban growth and agriculture remains a mainstay of its economy.
- Section 10 – On page 10-19 (line 36) Sonora is described as a community in the Sacramento Valley
- Section 19 – Discussion of the Ports and Deep Water Channels in 19.3.2.4 would benefit from data on tonnage at the respective ports.
- Section 19 – Discussion of the Airports in 19.3.2.5 identifies only two airports in the Delta, but the ESP identifies 11 general aviation airports within the Delta (ESP Section 9.3.4 Table 47).
- Section 20 – Discussion of the Environmental Setting (Section 20.3) does not include mention of the important gasoline and aviation fuel pipelines that pass through the Delta to depots for distribution throughout Northern California and Nevada.