

February 2, 2012

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

Dear Ms. Macaulay:

**EBMUD Comments on the Draft Environmental Impact Report
For the Delta Plan**

The East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Delta Plan Draft Environmental Impact Report (DEIR). EBMUD understands that developing the Delta Plan is a monumental and unprecedented task for the Delta Stewardship Council (Council), and we appreciate the efforts by the Council to involve stakeholders in this effort. We believe that there are some fundamental weaknesses in the DEIR relating to the project definition, stated project objectives, and other components of the analysis. This letter elaborates on a few broad concerns below, and we have also attached a matrix that includes specific technical comments.

**The Project Description and Statement of Project Objectives in the DEIR is
Inconsistent and Indefinite:**

The “project” at issue is the adoption of a comprehensive, long-term management plan for the Delta, consistent with the Delta Reform Act. This is stated clearly and accurately on Page 1-13, line 27, of the DEIR (“The discretionary action that will be considered by the Council is the adoption of the Delta Plan.”). There may be alternative means of developing a Delta Plan that is comprehensive and long-term and meets the Delta Reform Act requirements, but it is important to recognize that the development and adoption of the Delta Plan is the action that the Council is reviewing in the DEIR. Although the DEIR repeatedly notes that the Council has no direct authority to construct, own, or operate any facilities contemplated in the Delta Plan, the DEIR provides many details on specific projects that “could” be implemented by other entities, and further speculates on their impacts. The result is a confusing document that does not distinguish between actions that will result from implementation of the Delta Plan versus actions that are independent from approval or implementation of the Delta Plan.

While all reasonably foreseeable components of a project should be included in the project description, uncertain future activities and actions that are speculative and dependent on the independent decision-making of other agencies are not properly part of the project description. A more clear and precise description of the activity being undertaken by the

Council would enhance the usefulness of the DEIR. Lacking this, it is difficult to discern the underlying objective of the proposed project or alternatives, the physical impacts, or the means to mitigate those impacts.

The DEIR Improperly States and Evaluates the Project Impacts:

The Council is not empowered to undertake or require other agencies to undertake many of the actions discussed and evaluated in the DEIR. As recognized in the document, most of these actions will be undertaken by other state and local agencies pursuant to other state laws regardless of whether or not the proposed project – adoption of the Delta Plan – takes place. Several of the actions discussed in detail are also already underway. The DEIR confuses future decisions and actions and “project types” that will be undertaken by other state and local agencies pursuant to separate legal authorities and separate decision-making with the action that the Council is proposing to undertake.

By including many existing and potential projects that the Council has no direct authority to require or cause to occur, the project description language in Section 2 and the impacts discussion in the sections that follow, overstate the action being considered and as a result, fail to provide a meaningful analysis of the impacts of the project the Council is considering. Among other issues, the discussion fails to recognize that the co-equal goals and the articulated objectives inherent in these goals exist independent of the Delta Plan according to the language of the Delta Reform Act. These are state policies that are to be promoted and furthered by the Delta Plan, but they are not put in motion by the Council’s actions. The same is true of existing water quality laws, regulations, and plans, as well as the laws and regulations promoting conservation, recycling, and other actions.

Because of the overly broad description of the proposed project in Section 2A, the discussion of impacts focuses on projects and environmental impacts that are not a direct or even indirect impact of the development and adoption of the Delta Plan. One example is the discussion of the North Bay Alternative Intake Project in Section 2.2.3.1. The document acknowledges that the Department of Water Resources (DWR) is currently evaluating this project and that DWR will likely make a determination separate from any recommendations included in the Delta Plan. The impacts of the intake project thus are not a direct or indirect impact of the adoption of the Delta Plan and, as with other actions discussed in the DEIR, the impacts will be evaluated and alternatives considered regardless of the adoption of the Delta Plan.

Most of the treatment plants and other projects discussed in Section 2 will similarly proceed depending on their need, feasibility, and economic viability. While these decisions and the determinations regarding the need for these projects and the feasibility or desirability of alternatives may be guided by the Delta Plan, the determinations as to whether to undertake these projects will be made separately from any recommendations in the Delta Plan, particularly since the adoption of the Delta Plan will not provide a direct source of funding for these projects and the Council’s role will be limited to that of an appellate body. As a

result, the DEIR's discussion of these projects in Section 2 and the sections that follow is misleading.

With respect to projects to promote local and regional reliance, the DEIR appears to presume that many planned recycling and conservation projects may not occur absent the adoption and implementation of the Delta Plan, even though there are existing statutory and regulatory provisions prompting these actions. This presumption that the projects would not occur absent the adoption of the Delta Plan allows the DEIR to conclude that the "influence" of the Delta Plan and its policies and recommendations will result in the undertaking of these projects, and that will result in reduced reliance on the Delta. This questionable logic is present throughout the DEIR as it refers to the Delta Plan's likelihood of influencing and "nudging" projects forward (*see, e.g.*, page 2B-2, lines 4-27).

A more conservative approach to CEQA would avoid overstating the influence of the Delta Plan. The unsupported conclusions regarding the impacts of the adoption of the Delta Plan make it difficult to understand both the environmental effects that can be expected to result if the action at issue is undertaken, and the proper means for the Council or other entities to mitigate the effect of the action. This type of unwarranted speculation is discouraged under CEQA because it does not present a meaningful program-level evaluation that allows either the action agencies or the public to understand and evaluate potential environmental consequences.

The DEIR Improperly Describes the No Project Alternative and Its Impacts:

On page 2A-67, the DEIR states that the No Project Alternative includes physical activities/projects that are permitted and funded at this time, and the list of projects includes new intakes/diversions for the Freeport Regional Water Authority. The Freeport Regional Water Project is permitted and completed, and use of this project by the Freeport Regional Water Authority members is properly part of the baseline. As recognized in the DEIR, it will continue in existence under the No Project Alternative scenario, but this is because it is a permitted and completed project.

There is no clear differentiation between the projects included in the discussion of the No Project Alternative and those included in the discussion of impacts and the discussion of cumulative effects. The discussion and evaluation of the No Project Alternative should be addressing many of the plans and projects discussed in the impacts section as those are likely to advance even without the adoption of the Delta Plan, particularly over the 30-year timeframe of the DEIR. While the projects eliminated from the No Project discussion may not be included in existing, short-term plans, evolving regulatory requirements and other factors still make it likely these projects could be pursued even without the adoption of the Delta Plan. The impact of the No Project Alternative is that there will not be a comprehensive, long-term plan to guide actions and decision-making by other agencies with regard to the Delta and projects undertaken in the Delta. It does not mean, however, that the actions to promote water quality, enhance local supplies, or otherwise further the co-equal

goals necessarily will not be undertaken or that policies and regulatory requirements seeking to promote the co-equal goals will not be carried forward.

The DEIR suggests that the No Project Alternative will result in fewer local conservation and recycling projects than the Proposed Project alternative, but there is little explanation of the basis for this conclusion. It should be noted that as a result of the enactment and implementation of SB X7 7, local agencies will sponsor and construct conservation and recycling projects, regardless of whether or not the Proposed Project alternative is implemented. The DEIR mentions this statute, but does not adequately discuss the impacts it will have on its own. To the extent that these projects are not a feasible and cost-effective means of meeting water demand and complying with SB X7 7, they will not be undertaken, regardless of the development and adoption of the Delta Plan. We appreciate that the Delta Plan will promote or encourage these projects, but it will not cause them to occur.

The DEIR Does Not Sufficiently Discuss Alternative 2:

Alternative 2, as described on pg 2A-69, involves “*sharply decreased water exports from the Delta and its watershed to areas that receive Delta water (limited to a maximum of 3 million acre-feet/year. . . . It involves more water supply projects in the form of new or expanded groundwater storage, ocean desalination plants, and water treatment plants. It involves more water efficiency and conservation.*”

The DEIR does not explain or demonstrate how this alternative is feasible or consistent with the project objectives and the Delta Reform Act, and any detailed evaluation of this alternative is not possible without a more detailed description. No explanation is provided of how the 3 million acre-feet/year (3 MAF/yr) export limitation would be imposed by area, water diverter, water year type or over what time. Therefore, impacts simply cannot be assessed.

Policy ER P1 in the Draft Delta Plan, which calls for the State Water Resources Control Board to implement revised flow objectives in the Delta by June 2014, presumably would be the means to effectuate the 3 MAF/yr export limitation. However, no other explanation for the reason for the action or its feasibility or consistency with the project objectives is offered. Constructing replacement facilities, such as desalination and water recycling plants to offset sharply reduced exports may not be technically feasible in that timeframe. Whether basic health and safety needs could be met in export areas affected by this limitation and timing is unknown. The severity of this alternative must be understood to rationalize impacts, and no supporting analysis is provided by the DEIR.

Any Discussion of DCC Operations Should Address Mokelumne Salmonids:

Section 4, page 4-42, discusses impacts of operations of the Delta Cross Channel (DCC) on Sacramento River juvenile salmonids. The entire discussion is excessively focused on Sacramento River origin fish, and there is no corresponding discussion of the impacts on

salmonids originating from eastside Delta tributaries, i.e. Mokelumne, Cosumnes, and Calaveras Rivers. Operation of the DCC gates has the potential to significantly impact juvenile salmonids originating from eastside tributaries, especially if the DCC is operated as part of a through Delta conveyance proposal. Any discussion of the project background involving the DCC operations should include a thorough discussion of impacts on juvenile salmonids originating from the eastside tributaries, including the Mokelumne River.

The DEIR Should Address Potential Impacts to EBMUD's Mokelumne Aqueducts:

Even though there is detailed discussion of other related issues, the DEIR does not assess potential impacts on EBMUD's Mokelumne Aqueducts. To the extent that the DEIR is assuming that the Delta Plan will cause the actions and impacts discussed in the document to occur, impacts to these important water supply structures should be listed and considered. The alternatives are conceptual and do not provide the level of detail needed to fully assess if the alternatives favorably or negatively impact the flood risk to EBMUD's aqueducts. Alternative 1A specifically describes improvements to major waterways, presumably those in the vicinity of the aqueducts. Alternatives 1B, 2 and 3 are less clear, and may not include any significant improvements. In addition to flood risk impacts, each alternative that might involve levee improvements in the vicinity of the Mokelumne Aqueducts will likely also have temporary or permanent impacts to the aqueduct supports, crossings, etc. Although this is a program-level EIR, the possibility of such impacts should at least be acknowledged.

The primary purpose of CEQA is to inform agencies and the public as to the potential environmental effects and feasible alternatives of their projects before they commit to them, so that they can ensure that these impacts are mitigated to the extent feasible. Unfortunately, the DEIR fails to provide a basis for the Council, or other state and local agencies and interested persons, to have any real understanding of what the environmental consequences of the adoption of the Delta Plan might be.

EBMUD commends you and your staff for the work that has been completed. We recognize the substantial complexity of this task and hope that our comments can help to guide the process to a more understandable and effective CEQA compliance document. If you have any questions about the comments in this letter or the attached matrix, please contact Doug Wallace at (510) 287-1370.

Sincerely,



Alexander R. Coate
General Manager

ARC:DW:PGS

Attachment

**East Bay Municipal Utility District Comments
Delta Plan Draft Environmental Impact Report**

Pg #, line #	Recommended Edits	Discussion
Pg 2A-5, line 13	Starting on this line and throughout the DEIR, replace “recycled wastewater” with “recycled water”.	“Recycled water” is the term commonly referenced; “recycled wastewater” is not commonly used.
Pg 2A-21, lines 37-38	Recommend deleting the following: Many urban communities have been reluctant to implement recycling on a large scale due to the cost and community opinions about the reuse of wastewater.	This statement is a generalization about specific types of recycled water projects – primarily indirect potable water use.
Pg 2A-21	To the extent that a detailed discussion is included, Section 2.2.1.5 should be modified to separate the discussion of recycled water projects and stormwater projects.	The discussion of recycled water projects should be separate from the discussion of stormwater projects. It is confusing to lump the two types of projects together as the regulations for these types of projects and the infrastructure to implement them are different.
Pg. 2A-90, Table 2-5	Delete the Freeport Regional Water Authority project from the Table 2-5.	The Freeport project was completed in 2011 and should be considered a part of the baseline.
Pg 2A-92, lines 1-11	Delete the Freeport Regional Water Authority Project from this section.	The Freeport project was completed in 2011 and should be considered a part of the baseline.
Pg. 2B-2, lines 30 -31 and footnotes 1 & 2	Delete the following sentence and associated footnotes 1 and 2: “Agencies undertaking covered actions must incorporate these measures ¹ into their projects or plans in order for any such covered action to be consistent with the Delta Plan.” ²	Similar to noncovered actions, the DSC lacks the authority to require other agencies to adopt any particular mitigation measures even for covered actions, particularly to the extent that potential impacts have been mitigated to a level that is less than significant. The Delta Reform Act does not authorize the DSC to develop a Delta Plan Policy requiring incorporation of this EIR’s mitigation measures into covered actions in order for the covered action to be consistent with the Delta Plan. This section should be revised to acknowledge that the appropriate lead agency would implement mitigation measures for projects as required under existing law.
Pg 3-14, lines 4 & 5	Edit text to indicate that the Freeport Regional Water Project “was completed in 2011.”	The Freeport project was fully completed and operational in 2011.
Pg 3-25, lines 2&3	Revise the second sentence to delete the term “major.” (<i>i.e.</i> “It is a major tributary to the Delta.”)	The Mokelumne River generally contributes ~ 2.5% of Delta inflows, a small contribution as compared to the Sacramento River (62% of Delta inflow) or the San Joaquin River (15% of Delta inflow). (<i>Sacramento San Joaquin Delta Atlas, DWR, 1995</i>).
Pg 3-25, line 4	Insert the following text: “owned <u>and operated</u> by PG&E”.	

Pg #, line #	Recommended Edits	Discussion
Pg 3-25, line 5	Insert the following sentence after “began operation in 1963.” “ <u>Salt Springs is the largest single component of a network of reservoirs in the upper Mokelumne River that are owned and operated by PG&E. The remaining reservoirs in the PG&E system have an additional capacity of 80,400 acre-feet.</u> ”	Although Salt Springs reservoir is PG&E’s largest reservoir in its network of upper Mokelumne reservoirs, PG&E’s total reservoir storage capacity on the upper Mokelumne is nearly 222,300 acre-feet.
Pg 3-25, line 7	Text should be corrected as follows: “Pardee, completed in 1929, has a <u>licensed storage capacity of 209,900 209,950 acre-feet.</u> ”	Although the physical capacity of a reservoir may change over time, the licensed storage capacity of Pardee is 209,950 acre-feet.
Pg 3-25, line 8	Text should be corrected as follows: “Camanche Reservoir, with a current storage capacity of 430,800 <u>417,120</u> acre-feet, is downstream of Pardee Dam.”	Camanche Reservoir was originally constructed with a storage capacity of 431,500 acre-feet, but its current storage capacity is 417,120 acre-feet.
Pg 3-25, lines 9-12	Modify the text as follows: “Water is exported from the Mokelumne River watershed to the EBMUD service area via the Mokelumne River <u>Aqueducts</u> , which receives water directly <u>draw from</u> Pardee Reservoir. Water is released from Camanche Reservoir to maintain downstream water requirements and to provide flood protection on the Mokelumne River. <u>Camanche Reservoir is operated jointly with Pardee Reservoir to provide water supply benefits while maintaining downstream obligations, including stream flow regulation, water for fisheries and riparian habitat, flood control, and obligations to downstream diverters.</u> ”	The aqueducts should be correctly identified as the Mokelumne Aqueducts, not the “Mokelumne River Aqueduct.” Also the revised text provides greater clarity and detail with respect to how and why the Pardee and Camanche Reservoirs are operated.
Pg 3-35, line 7	Insert the following underlined text: “The Mokelumne River, <u>on average</u> , supplies more than 90 percent...”	
Pg 3-35, line 7	Edit the sentence as follows: “...serving almost over <u>1.3 million</u> people.”	

Pg #, line #	Recommended Edits	Discussion
Pg 3-35, lines 34-39	<p>The entire paragraph should be deleted and replaced as follows: A joint conjunctive use and groundwater banking project is being evaluated by the East San Joaquin Parties Water Authority and EBMUD, named the Mokelumne Aquifer Recharge and Storage Project (NSJCGBA 2004, p. 34). The goal is to store surface water underground in wet years, and in dry years, EBMUD would be allowed to extract and export the recovered water supply (NSJCGBA 2004, p. 34). Several studies have concluded that the test area is suitable for recharge and recovery of groundwater. However, more testing needs to be done to further evaluate the feasibility of this project.</p> <p><u>“San Joaquin County, through its Mokelumne River Water and Power Authority, is investigating the feasibility of a conjunctive use project involving the storage of flood flows as sourced from the Mokelumne River and storing said flows in the Eastern San Joaquin Groundwater Basin (that project is termed “The MORE WATER Project”). The study has no formal partner agencies, although funds have been provided by the U.S. Bureau of Reclamation to further various feasibility efforts. Other regional-partner efforts, such as a proposed Integrated Regional Conjunctive Use Project that includes as participants EBMUD, various San Joaquin County water providers, along with Amador and Calaveras County water providers, have been discussed as means to bank wet year flows from the Mokelumne River in the Eastern San Joaquin Groundwater Basin. Those efforts are highly conceptual in nature.”</u></p>	<p>The existing text is outdated and incorrect. The recommended revision provides a current summary of the project.</p>
Pg 3-51, lines 38-39	<p>The sentence “EBMUD currently supplies the highest amount of recycled water in the Bay Area” should be replaced with the following: “EBMUD is currently one of the largest recycled water suppliers in the Bay Area.”</p>	<p>EBMUD and South Bay Water Recycling are the largest suppliers currently, and at some times South Bay Water Recycling produces more recycled water than EBMUD.</p>

Pg #, line #	Recommended Edits	Discussion
Pg 3-51, lines 39-41	Revise as follows: “In 2010, approximately 58,000 acre-feet per year of recycled water was produced... Recycled water production could expand up to 80,000 acre-feet per year in 2015.	The source for these updated numbers is the recently completed recycled water Bay Area survey completed by the Bay Area Clean Water Agencies in November 2011.
Pg 3-51, line 44	Revise as follows: “The Bay Area Integrated Regional Water Management Plan (IRWMP) was developed as part of this effort. Bay Area agencies have also received federal funding for water recycling projects as part of Reclamation’s...”	The Bay Area Regional Recycling Program (as referenced) no longer exists.
Pg 3-52, lines 31-32	Delete “EBMUD and the City of Napa are investigating opportunities for groundwater banking.”	This statement implies that EBMUD and the City of Napa are considering a joint groundwater banking project. This is incorrect. EBMUD is not investigating groundwater banking opportunities with the City of Napa.
Pg 3-52, lines 36-40	Consider eliminating the discussion of interties in this section and the subsequent table (Table 3-10). It would be clearer if the discussion and table were limited to transfer and exchange agreements.	This paragraph and the following table (Table 3-10) are confusing because they intermingle the concepts of exchange agreements and interties. Many of the interties referenced are intended for emergency use only.
Pg 3-53, Table 3-10	Under the “CCWD and CCWD’s Wholesale Customer Interties” category, delete the following: “Emergency interties including one raw water intertie with EBMUD and treated water interties between...” Also, delete the last “CCWD-EBMUD” reference in this section.	EBMUD is not a CCWD wholesale customer and the interties being referenced here are already correctly referenced farther down in the chart under the category of “EBMUD-CCWD Interties.”
Pg 3-53, Table 3-10	Under the “EBMUD-CCWD Interties” category, replace the existing text with the following: “CCWD and EBMUD have three interties. The CCWD/EBMUD Interconnection Facility is a raw water intertie connection between the Los Vaqueros Pipeline and Mokelumne Aqueduct that can convey up to 100 mgd. Two other small treated water interties connecting the CCWD and EBMUD distribution systems can deliver up to 10 mgd of treated water.	The existing text is not accurate and should be corrected with the text provided here. The existing text also refers to “two small interties with city of Hayward”. These two small interties do exist between EBMUD and the City of Hayward, but they are improperly referenced here as an EBMUD-CCWD intertie.
Pg 3-53, Table 3-10	Insert the underlined text: “Emergency 30-mgd <u>treated water</u> intertie between EBMUD and SFPUC (<u>via</u> City of Hayward).	

Pg #, line #	Recommended Edits	Discussion
Pg 3-101	Add the EBMUD Urban Water Management Plan 2010 as a reference document.	The EBMUD UWMP 2010 includes information to substantiate the recommended edits, as well as other relevant information.
Pg 4-42, lines 33-35	This section should be expanded to include a discussion of impacts to juvenile salmonids originating in the eastside Delta tributaries, i.e., Mokelumne, Cosumnes, and Calaveras rivers.	This section addresses impacts on juvenile salmonids resulting from operation of the Delta Cross Channel. However, it only discusses impacts on Sacramento origin fish. Operation of the DCC gates during the spring can have significant adverse impacts on eastside tributary juvenile salmonids.
Pg 4-46, lines 30-31	Suggest deleting “Steelhead are now maintained in the river by hatchery releases.”	Although this section is largely true because historical native runs of salmonids were eliminated by toxic wastes, steelhead in the river are not necessarily maintained by the fish hatchery. A mark and recapture population survey in the river found primarily unmarked <i>O. mykiss</i> populations, indicating that they were not being “maintained” by the hatchery (all hatchery steelhead are marked with adipose fin clips). These populations are still considered part of the CV steelhead distinct population segment.
Pg 4-47, lines 31-40	Suggest contacting the Cosumnes River Preserve to determine whether or not the lesser sandhill crane is also known to inhabit the Preserve and editing the document accordingly.	
Pg 22-25, Table 22-1	Suggest revising the references to the Bay Area’s Regional Desalination Project (RDP), including the description in Table 22-1 and the references in the cumulative impacts sections of the chapter.	This section references three different desalination projects. Both Huntington Beach and Carlsbad have completed EIRs and Carlsbad is in the construction phase. In contrast, the Bay Area RDP is still in the study phase and has not yet been identified as a project. The text should be revised to note that the RDP is in very early planning stages.
Pg. 23-17, lines 36-39	Sect. 23.3.5.3.1 – Through Delta Conveyance Concepts. Diverting water “from the Mokelumne River into a tunnel under the San Joaquin River to convey water directly to Middle River” requires a discussion of impacts and necessary mitigations.	The concept of diverting water “from the Mokelumne River into a tunnel under the San Joaquin River to convey water directly to Middle River,” and thence to the SWP and CVP pumping plants would likely result in significant adverse impacts to outmigrating juvenile salmonids from the Mokelumne River and adversely impact the ability of returning adult salmon to locate the Mokelumne River. These impacts should be identified in the DEIR and mitigated.

Pg #, line #	Recommended Edits	Discussion
Pg 23-18, lines 8-12	<p>Sect 23.3.5.3.1 – Through Delta Conveyance Concepts. The “Delta Corridors” proposal is not accurately described in the DEIR with respect to the Mokelumne River. The Delta Corridors concept included a connection from the Mokelumne River to the Sacramento River in the North Delta to allow Mokelumne River fish to migrate via the Sacramento River instead of the South and North Forks of the Mokelumne River. (“The Delta Corridors Plan and Its Potential Benefits”, ICF Jones & Stokes, Russ Brown, Nov. 2009.</p> <p>www.deltacouncil.ca.gov/sites/default/files/documents/files/Brown Attachment1.pdf)</p>	<p>DEIR states; “Water would be conveyed through the lower Mokelumne River system and across the San Joaquin River to Middle River to Victoria Canal.” This would result in the same or similar impacts as noted in our comment for pg 23-17. The Delta Corridors concept actually included a modification to the Mokelumne River to mitigate fishery impacts. See Detail Map 3, Map 9, Point 11 on pg. 5, and point 10 on pg. 34. The report provided a thorough discussion indicating how gates would be used at lower flow rates to divert the Mokelumne River into the Sacramento River upstream of Locke.</p> <p>The DEIR should be revised to reflect this component of the Delta Corridors proposal.</p>