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SUBJECT: NDWA Comments on Delta Plan EIR

The North Delta Water Agency (NDWA) respectfully submits these comments on the Delta Stewardship Council's (Council) Delta Plan EIR. We apologize for the length of the comments, but due to the inability to properly convey our concerns over the content of the Delta Plan Proposed Project and EIR in the snippets of time allowed at the Council's public meetings, we felt it important to be as comprehensive as possible. However, our comments are limited by the vague and unspecific nature of the Proposed Project which lacks any details of projects or analysis of quantifiable individual or cumulative impacts, preventing us from making a meaningful evaluation of the projected impacts.

General Comments

The North Delta Water Agency (NDWA) is comprised of approximately 300,000 acres in the legal Delta and was formed by a special act of the Legislature in 1973 to negotiate an agreement to (a) protect the water supply of the lands within the NDWA against intrusion of ocean salinity and (b) assure the lands within the Agency of a dependable supply of water of suitable quality sufficient to meet present and future needs. In 1981, DWR and NDWA executed a Contract for the Assurance of a Dependable Water Supply of Suitable Quality (Contract).

The purpose and intent of the 1981 Contract is a guarantee by the State of California that, on an ongoing basis, it will ensure that suitable water will be available in the northern Delta for agriculture and other beneficial uses. Article 6 of Contract further prohibits the State from conveying water for the SWP from decreasing or increasing the natural flow or reversal of the natural flow direction, or to cause the water surface elevation in Delta channels to be altered, to the detriment of Delta channels or water users within the Agency and further obligates the State to repair or alleviate all damage to lands, levees, diversion facilities, embankments or revetments adjacent to Delta channels within the Agency.

As a water contractor with the Department of Water Resources concerned with water supply quality and reliability, and because all five of the new water diversion intakes, new forebay, intermediary pumping plant and a significant portion of the habitat restoration currently proposed in the BDCP and Biological Opinions is located within the boundaries of the NDWA and will likely have an impact on the criteria in our 1981 Contract, we are concerned with the significant and unmitigated impacts associated with implementation of the Proposed Project in this EIR.

The NDWA Contract has two provisions which are particularly pertinent to the projects, impacts, and mitigations associated with the Proposed Project EIR, which our comments will refer to often:
Article 2 – ***"(a)(i) The State will operate the SWP to provide water qualities at least equal to the better of: (1 the standards adopted by the SWRCB as they may be established from time to time; or (2) the criteria established in this contract as identified on the graphs included as Attachment A."***
"(a)(iii) The quality criteria described herein shall be met at all times except for a transition period beginning one week before and extending one week after the date of change in periods as shown on the graphs of Attachment A."

Article 6 - ***"The State shall not convey SWP water so as to cause a decrease or increase in the natural flow, or reversal of the natural flow direction, or to cause the water surface elevation in Delta channels to be altered, to the detriment of Delta channels or water users within the Agency. If lands, levees, embankments or revetments adjacent to Delta channels within the Agency incur seepage or erosion damage or if diversion facilities must be modified as a result of altered water surface elevations as a result of the conveyance of water from the SWP to lands outside the Agency after the date of this contract, the State shall repair or alleviate the damage, shall improve the channels as necessary, and shall be responsible for all diversion facility modifications required."***

<u>NDWA Anticipated Impacts from the Proposed Project</u>

- Diminishment of water quality beyond NDWA Contract criteria, by increasing salinity intrusion into the North Delta, due to implementation of proposed habitat restoration, levee modifications, and new water conveyance facilities and operations
- Alteration of water surface elevations to the detriment of water users and channels within the Agency's 300,000 acre boundary, from proposed modifications to levees, new water conveyance facilities, and new water operations in the Delta
- A decrease or increase in the natural flow or reversal of the natural flow direction, elevations to the detriment of water users and channels within the Agency's 300,000 acre boundary, from proposed habitat restoration, modifications to levees, new water conveyance facilities, and new water operations in the Delta
- Seepage damage to lands, levees, embankments or revetments adjacent to Delta channels within the Agency's 300,000 acre boundary, , due to implementation of proposed habitat restoration, levee modifications, and new water conveyance facilities and operations
- Erosion damage to lands, levees, embankments or revetments adjacent to Delta channels within the Agency's 300,000 acre boundary, , due to implementation of proposed habitat restoration, levee modifications, and new water conveyance facilities and operations

- Modification of diversion facilities within the boundaries of the Agency's 300,000 acres, as a result of altered water surface elevations, due to implementation of proposed habitat restoration, levee modifications, and new water conveyance facilities and operations
- Unknown at this time, but potential other impacts that cannot currently be identified due to the vague and unspecific nature of the Proposed Project and EIR

Proposed Project Assumptions

The EIR tries to distance the Proposed Project from the need to provide details regarding specific projects, project individual and cumulative impacts, and mitigations necessary to reduce the impacts to a level of insignificance by disclaiming: "The Council does not propose or contemplate constructing, owning, or operating any facilities used for water supplies, ecosystem restoration, water quality protection flood management, or protection and enhancement of values of the California Delta as an evolving place to implement the Delta Plan recommendations or regulatory policies."

However, the Proposed Project in each section of the EIR dealing with the aforementioned policy areas ***"assumes"*** actions ***will occur*** over time:

2.2.1 Reliable Water Supply

- "this EIR ***assumes*** that the Proposed Project recommendations regarding storage ***will*** lead to an increase in water storage projects."
- "this EIR ***assumes*** that the Proposed Project ***will*** lead to an increase in local and regional water reliability projects." (Page 2A-6)

2.2.2.1 Overview Delta Ecosystem Restoration

- "ER R1 encourages ecosystem restoration in ***five identified areas*** as a priority:" (Page 2A-25)

2.2.2.2 Floodplain, Riparian Habitat, and tidal Marsh Restoration

- "this EIR ***assumes*** that the Proposed Project ***will*** lead to an increase in Delta ecosystem restoration projects." (Page 2A-26)

2.2.3.1.3 Conveyance Facilities

- "the EIR ***assumes*** that DWR ***will*** complete the evaluations and implement a program to improve drinking water quality and water supply reliability for the North Bay Aqueduct water users." (Page 2A-44)

2.2.4.1 Overview of Flood Risk reduction in the Delta Programs

- "the EIR ***assumes*** that these agencies ***will*** implement such protections, especially for the Yolo Bypass, Cosumnes and Mokelumne rivers confluence, and the Lower San Joaquin River near Paradise Cut" (Page 2A-46)

2.2.4.2.5 Completion of Ongoing Studies to Identify Levee Maintenance and Improvement Needs and Establish Emergency Response Procedures

- "the EIR ***assumes*** that the agencies ***will*** implement these programs." (Page 2A-49

2.2.4.5 Reservoir Operations

- "the EIR ***assumes*** that the agencies ***will*** implement these types of programs." (Page 2A-51)

2.3 Mitigation Measures

- "the analysis in this EIR ***assumes*** that the Delta Plan has the desired outcome."

As a consequence of the myriad of actions and projects assumed to occur through implementation of the Proposed Project in this EIR, the EIR cannot avoid the obligation to specifically identify and quantify the extent of these projects both individually and cumulatively, to specifically identify and quantify the individual and cumulative impacts each project, and to offer mitigation for all of the significant impacts.

Known Projects Named in the Proposed Project

In addition, for each policy area, potential projects that are "known" at this time are listed for each policy area of the Proposed Project:

2.2.1 Reliable Water Supply

- "***Four possible projects***, however, ***are known*** to some degree and ***are named*** in the Proposed Project:" (Page 2A-5)
- "Figure 2-1, "General Locations of ***Projects Named in the Proposed Project*** or Alternatives" (Fifteen projects named with locations, Page 2A-13)
- "When completed, it [BDCP] ***must*** be incorporated into the Delta Plan if it meets certain statutory requirements."

2.2.2.1 Overview Delta Ecosystem Restoration

- "General ***locations*** of these programs are presented in ***Figure 2-1***." (Page 2A-25)

2.2.2.2.4 Delta Ecosystem Habitat Restoration Projects

- "The Proposed Project encourages implementation of habitat restoration projects in the following areas: ***Cache Slough Complex, Cosumnes River-Mokelumne River Confluence, Lower San Joaquin River Floodplain Suisun Marsh, Yolo Bypass***." (Page 2A-33)
- "The Cache Slough area includes ***Liberty Island, Little Holland tract, Prospect Island, Little Egbert Tract, and surrounding waterways***" (Page 2A-33)
- "portions ***of Calhoun Cut in the Calhoun Cut Ecological Reserve***" (Page 2A-33)
- "focused in the vicinity of ***McCormack-Williamson tract, Dead Horse Island, New Hope Tract, and Grizzly Island***." (Page 2A-34)
- "include levee ***breaching along the Mokelumne River***, levee ***degradation along Dead Horse Slough***, and levee modification to lower the ***levee along Snodgrass Slough*** to expand the floodplain onto ***McCormack-Williamson Tract***." (Page 2A-34)
- "expansion and restoration of the channels located to the south and west of ***Paradise Cut***, south of ***Stewart Tract***" (Page 2A-34)

2.2.3 Water Quality Improvement

- "***Six possible projects***, however, are ***known*** to some degree and are named in the Proposed Project:" (Page 2A-40)

2.2.4 Flood Risk Reduction

- "***Three possible projects***, however, ***are known*** to some degree and are named in the Proposed Project:" (Page 2A-46

2.2.5 Protection and Enhancement of Delta as an Evolving Place

- "***Three possible projects***, however, ***are known*** to some degree and are ***named in the Proposed Project as locations*** for future State parks: Barker Slough, Elkhorn Basin, and Southern Delta." (Page 2A-52)

As a consequence of the myriad of actions and projects "known" and "named" in the Proposed Project in this EIR, the EIR cannot avoid the obligation to specifically identify and quantify the extent of these projects both individually and cumulatively, to specifically identify and quantify the individual and cumulative impacts each project, and to offer mitigation for all of the significant impacts.

Projects and programs that are "known to some degree" and are "named in the Proposed Project" certainly fall under the definition of "foreseeable" and "probable" projects under CEQA and therefore the EIR must quantify the impacts and propose appropriate mitigations. This EIR does neither.

Since DWR is already in the process of condemning through eminent domain laws lands in the North Delta for purposes of geo-technical drilling at the locations of new water supply reliability water conveyance facilities for the BDCP, these too are known, foreseeable and probable locations that need to be evaluated, analyzed, and the impacts identified and mitigated in the Proposed Project EIR. In addition, the BDCP and its Conservation Measures meets the criteria "for considering whether a project is a reasonably foreseeable and probable in this EIR" as the BDCP has been "defined in adequate detail, either through completion of publicly available preliminary evaluations, feasibility studies, or draft environmental and engineering documents, to estimate potential impacts." The Chapters of the BDCP, including Conservation Measures, was released in November 2010 and documents associated with the BDCP EIR including draft environmental and engineering documents have recently been made available to the public.

In addition, there are near term habitat restoration goals in the Delta, with specific acreage required under certain timelines, to be implemented pursuant to the Biological Opinions for Delta smelt and salmon.

This EIR is insufficient as it fails to properly identify, quantify, analyze or mitigate the impacts of all projects proposed by the BDCP or the Biological Opinions.

Timeline - The Delta Plan has a very long vision of planning for one hundred years of change and is therefore intended to be adaptable with updates to the Plan every five years. Throughout the EIR, the document states that the "EIR assumes that the Proposed Project recommendations will lead to" the various outcomes the Plan has predicted. Yet the EIR fails to provide specifics on the amount of change that it "assumes" will occur in terms of how many acres will be converted from agriculture to habitat, how many acres of agriculture will be replaced by water conveyance infrastructure facilities, the range of Delta water flows expected under various water conveyance schemes (3,000-15,000 cfs out of North Delta), or the amount of levee improvement investments expected over time.

In order for this EIR to properly discuss the Proposed Project's incremental effects and determine when they are cumulatively considerable (CEQA Guidelines section 15130(a)(1) for purposes of mitigating them to a level of insignificance, this EIR must break down the long planning horizon of the Proposed Project into manageable timelines that allow "foreseeable and probable" impacts to be identified, quantified, and mitigated. This breakdown into manageable timelines will also allow the Delta Plan to adapt in its five year updates as "assumed" projects become reality over time. Specifically, the EIR should outline the long planning horizon of the Proposed Project into discrete and manageable chunks of time as follows:

"Near Term" (1-10 years)
"Mid Term" (11-20 years)
"Long Term" (21-50 years)

The EIR should also provide benchmarks in terms of the specific amount and intended locations for the physical changes it "assumes" will occur in each time period, quantify the anticipated impacts for each time period, and the proposed mitigation for each time period. This seems like an appropriate way for a Programmatic EIR that "assumes" certain changes to the Delta shall occur to provide sufficiently detailed information to the public on the expected impacts and consequent mitigations.

Specific Comments by EIR Sections

Section 2.1.1 Policies and Recommendations
Page 2A-2, lines 1-18: As the EIR correctly states, some of the Delta Plan policies and recommendations could directly or indirectly lead to construction of new or modified facilities throughout California, but in particular in the Delta in which the Delta Plan is supposed to protect. Because the Delta Plan "assumes" the types of projects, facilities, or outcomes from the Delta Plan policies and recommendations for the five issue areas listed in Section 2.1.1, the EIR should identify and quantify the impacts and mitigations.

Section 2.2.1 Reliable Water Supply
Page 2A-5, lines 16-20 and Page 2A-6, lines 40-41: The EIR says the Proposed Project recommends completion of the BDCP, therefore all of the Conservation Measures and mitigation in the BDCP should be listed as a foreseeable project under "Reliable Water Supply" for the Delta Plan EIR. Section 4.4.3.1, Reliable Water Supply, page 4-61, states that the number and location of all potential water supply projects are not known at this time, however the Conservation Measures of BDCP and the EIR/EIS Chapter of the DHCCP have both been released to the public, so this information is known in terms of the CEQA definition of foreseeable project that must be analyzed in this EIR. Pursuant to the CEQA requirements stated in Section 22.1 regarding criterion for considering whether a project is reasonably foreseeable and probable in this EIR is whether the project has been defined in adequate detail, either through the completion of publicly available preliminary evaluations, feasibility studies, or draft environmental and engineering documents, or to estimate potential impacts. Since the DHCCP has released to the public EIR/EIS documents for the BDCP of *preliminary evaluations as well as draft environmental and engineering documents*, then the BDCP should be included as one of the "four possible projects" listed on lines 16-20 of Section 2.2.1, page 2A-5 that will "expand conveyance and storage."

Section 2.2.1.2.1 Surface Water Intakes and Diversions from Streams and Rivers
Page 2A-7, lines 12-43: This section, the Proposed Project, and this EIR should not be so obtuse. The title of this section is called, "Surface Water Intakes and Diversions from Streams and Rivers." What streams and rivers? What size intakes and diversions? If the Delta Plan and the EIR are talking about a Peripheral Canal or Tunnel to move Delta water around the Delta, then it should say so, instead of being vague. This Section should also describe the size of the intake/diversions (e.g. 3,000 cfs), the number of intakes (five intakes), what river or stream they are proposed to be placed in (Sacramento River), approximate locations, and the distance between each of the intakes so that the public can determine if the individual and cumulative impacts have been analyzed in this EIR.
Section 2.2.1.2.1, page 2A8, lines 14-16, should also include a new electrical power substation that will likely need to be constructed to run a 15,000 cfs intermediary pumping plant, five 3,000 cfs intake diversions, and any other associated facilities of a Peripheral Canal/Tunnel surface water project.

Page 2A-8, lines 32-38: This section states the operation of new intakes/diversion facilities would change stream flows and water quality at the intake locations, but says the diversion patters would be accordance with various state and federal policies. First problem is this section fails to identify which river or streams these facilities are proposed to be located, let alone their intake locations, so the public is left guessing whether they will have changed stream flows and water quality. We are "assuming" the intakes discussed in this section are referring to the five intakes proposed in the North Delta pursuant to the BDCP, which raises the second problem of this section failing to include the North Delta Water Agency and DWR 1981 Contract in this list of requirements these intakes would need to be in compliance. Section 2(a)(iii) of the NDWA Contract specifically says, ***"The quality criteria described herein shall be met at all times except for a transition period beginning one week before and extending one week after the date of change in periods as shown on the graphs of Attachment A."*** Section 6 of the NDWA Contract specifically says, ***"The State shall not convey SWP water so as to cause a decrease or increase in the natural flow, or reversal of the natural flow direction, or to cause the water surface elevation in Delta channels to be altered, to the detriment of Delta channels or water users within the Agency. If lands, levees, embankments or revetments adjacent to Delta channels within the Agency incur seepage or erosion damage or if diversion facilities must be modified as a result of altered water surface elevations as a result of the conveyance of water from the SWP to lands outside the Agency after the date of this contract, the State shall repair or alleviate the damage, shall improve the channels as necessary, and shall be responsible for all diversion facility modifications required."*** We would therefore ask the NDWA Contract be added to this section and analyzed in the EIR.

Section 2.2.1.8 Delta Conveyance – Bay Delta Conservation Plan
Page 2A-24: This section says the Delta Plan, and therefore the Proposed Project, does *not* contain any recommendations concerning the content of the BDCP, but this is *not* true. The Proposed Project has policies and recommendations related to new intake/diversions for water supply reliability (Section 2.2.1 Water Supply Reliability) and habitat restoration projects (Sectoin 2.2.2 Delta Ecosystem Restoration) that are the same as the Conservation Measures in the BDCP.

Section 2.2.2 Delta Ecosystem Restoration
Page 2-A, lines 29-45: This section encourages increased Delta ecosystem restoration, but fails to identify how much in terms of number of acres to be converted to habitat or even mention the Restoration Opportunity Areas in the Delta Plan. The DSC Proposed Project includes ecosystem restoration projects that are also identified as Conservation Measures in the BDCP, so all of those habitat projects should be included as known projects or foreseeable projects that must be analyzed in this EIR. In addition, some of the projects listed as known projects in this EIR are also being pursued under the Biological Opinions, which includes many other "near term" projects that should be listed as known or foreseeable projects to be analyzed in this EIR. In light of the type of habitat, size of habitat, and location of various habitat projects anticipated and foreseeable pursuant to BDCP Conservation Measures and Biological Opinion actions, the Proposed Project should specifically analyze this amount of habitat creation in this EIR.

Page 2A-24, lines 33-37: This section supports a flow regime in the Delta that supports ecosystem and public trust resources. We believe the Proposed Project should also support a flow regime in the Delta that supports compliance with the NDWA Contract water quality assurances and criteria.

Section 2.2.2.1 Overview Delta Ecosystem Restoration
Page 2A-25, lines 30-36: The proposed project encourages five restoration projects as priority. Then this EIR should provide detailed analysis of the acreage and impacts from these priority projects and proposed mitigations.

Section 2.2.2.2 Floodplain, Riparian Habitat, and Tidal Marsh Restoration
Page 2A-26, lines 31-37: This EIR *assumes* the Proposed Project will lead to an increase in Delta ecosystem restoration projects. Then this assumption should be described in detail, analyzed, and mitigation provided in this EIR. How much of an increase will occur? What is the extent of the impact on local in-Delta water quality and availability, water surface elevations, erosion, seepage, reclamation district flood management, and agriculture economy? If we don't know how many acres the Proposed Project "assumes" will become habitat, then how can the public determine if the EIR proposed mitigation is adequate?

Page 2A-28, lines 1-36: The kinds of sweeping changes expected to occur to Delta levees including breeching, setting back, degradation, and removal will have serious consequences of creating erosion to neighboring levees that had not previously been subject to tidal action, causing seepage, erosion, scouring and possible failure of those levees without additional reinforcement. As mentioned previously, Article 6 of the NDWA Contract prohibits the State from conveying SWP project water in a way that causes harm to Delta water users and Delta channels and further requires the State is responsible for all repairs and improvements. Yet, the EIR fails to identify "assumed" levee alterations for the "known" projects listed or the "foreseeable" projects associated with the BiOps and BDCP, quantify the impacts from these alterations, or spell out the mitigation and the State's responsibility for those mitigations. The EIR should recognize that the "increase in Delta ecosystem restoration projects" the Proposed Project assumes will occur (page 2A-26) is likely to result in an increase in the frequency and severity of levee failures and flooding due to the change in water flow velocities, erosion, wave fetch, seepage, and scouring from newly introduced tidal action. This likely damage needs to be identified and quantified in the EIR for the Near Term, Mid Term, and Long Term time periods and include the mitigation and responsible party to pay for the mitigation. In addition, the alterations to various levees throughout the Delta for both habitat and water conveyance projects

assumed to occur in the Proposed Project will significantly disrupt the irrigation and drainage canal systems on Delta islands, affecting the ability of Reclamation Districts to meet their maintenance and operation obligations, which could put people and property at risk to flooding. This impacts to Reclamation Districts needs to be quantified and mitigations identified in this EIR.

Section 2.2.2.2.3 Tidal Marsh Habitat Restoration

Page 2A-32, lines 22-23: The NDWA Contract has specific water quality requirements regarding salinity which cover 300,000 acres within the Agency's boundaries. The water quality criteria in the Contract is different than the SWRCB's water quality standards. Any Proposed Project policies and recommendations should recognize any increase in tidal marsh habitat will have to be planned, constructed, and implemented in a way that maintains the water quality criteria set forth in the NDWA Contract.

Page 2A-22, lines 3-10: This section proposes excavation and grading of land that will not only change the land elevations, but is also likely to alter the water surface elevations in the vicinity around the project. As mentioned earlier, the EIR needs to recognize Article 6 of the NDWA Contract prohibiting the State from altering water surface elevations and water flows to the detriment of North Delta water users or channels and require habitat projects to be designed and implemented to prevent violation of Article 6.

Section 2.2.2.2.4 Delta Ecosystem Habitat Restoration Projects

Page 2A-33, lines 26-30: The Proposed Project encourages the Delta Conservancy to adopt criteria for prioritization of "large –scale ecosystem restoration" in the Delta and Suisun Marsh, specifically encouraging implementation of habitat projects in the Cache Slough Complex, Cosumnes River-Mokelumne River Confluence, Lower San Joaquin River Floodplain, Suisun Marsh, and Yolo Bypass. The EIR should translate "large-scale" into acres. How much land is expected to be converted into habitat, what are the individual and cumulative impacts from this "large-scale" conversion over the Near Term, Mid Term, and Long Term, and what are the proposed mitigation for these impacts?

Page 2A-34, lines 1-5: While it may be true that specific environmental analysis have not been done and specific properties have not been identified for purchase, the Proposed Project and EIR can "predict" locations and amounts of acres intended for ecosystem restoration based on projects identified in the BiOps, as Conservation Measures in the BDCP, as Restoration Opportunity Areas in the Delta Plan and BDCP, as well as in the DFG *Conservation Strategy for Restoration of the Sacramento-San Joaquin Delta Ecological Management Zone and the Sacramento and San Joaquin Valley Regions* (DFG 2011). At the very least the BiOps projects have timeline requirements that fall under the Near Term timeline proposed earlier, so the number and location of projects *can* be predicted and *should* be predicted and mitigated under the EIR.

Page 2A-35, lines 32-39: This section once again claims that it is difficult to predict which areas of the Yolo Bypass will become part of an ecosystem restoration program. We adamantly disagree with this assertion. First of all there are specific projects in the Yolo Bypass (Yolo Ranch, Prospect Island, Liberty Island, Fremont Weir, etc.) already in the planning stages by DWR, the Westlands Water District, Metropolitan Water District, and others that are either being done with the intent to comply with the BiOps and to eventually be incorporated into and credited in the BDCP. Secondly, lines 36-37 on page 2A-26 specifically states, "this EIR

assumes that the Proposed Project will lead to an increase in Delta ecosystem restoration projects." Third, the projects already in the planning stage and or being contemplated in the Biops and BDCP are "reasonably foreseeable" and "probable future" projects as defined on lines 18-28 on page 22-1 of this EIR. Therefore, this EIR and the Proposed Project specifically, must identify the anticipated number of acres and intended location of all of the "foreseeable and probable" projects expected in the Near Term, Mid Term, and Long Term, identify the impacts for each time period, and the mitigation for each time period based on the "assumption" these projects will become part of the ecosystem restoration program.

Section 2.2.4 Flood risk Reduction
Page 2A-46, lines 17-24: Any of these individual actions have the potential to alter water elevations, cause seepage and erosion damage, alter natural flows, disrupt irrigation and drainage facilities or any number of impacts that could threaten public safety, but are compounded when the cumulative impacts of these actions are implemented. Yet, the EIR fails to quantify these impacts or offer any mitigation.

Section 2.2.4.1 Overview of Flood Risk Reduction in the Delta Programs
Page 2A-47, lines 4-13: The Proposed Project requires use of more stringent levee design criteria and increase the level of flood protection in certain areas of the Delta. The Proposed Project should identify how many levee miles need upgrading to meet the new criteria and level of flood protection in the Delta Plan, what the impacts of these actions are and how they will be mitigated.

Section 3.3.3.4.1 Surface Water Use
Page 3-15, lines 5-6: This section fails to note the failure of the SWP to complete construction on a significant portion of its planned storage and available yield in California's North Coast. Water export contracts for surplus water supply were never adjusted for the diminished project yield.

Section 3.3.3.4.2 Environmental Water Use
Page 3-15, lines 14-20: This section fails to recognize the existence of the North Delta Water Agency Contract that controls water quality on a year-round basis. The Contract's standards/criteria for water quality (salinity) are more stringent than D-1641 for portions of the year. The criteria in the Contract are not subject to alteration without NDWA's consent.

Section 3.4.2 Thresholds of Significance
Page 3-77, lines 1-12: This section lists three threshold metrics to identify when impacts will be considered **SIGNIFICANT**. The third metric states, **"Substantially change water supply availability to *water users located outside the Delta* that use Delta water."** (emphasis added) The statutory language is clear when it says, "water supply reliability for California", it did not exclude the Delta, and neither should this EIR in its metrics for identifying when impacts will be significant. This omission may also violate the provisions of the NDWA Contract. Every impact identified in Section 3.4 has the very real probability of causing serious and significant effects on the availability and quality of water for in-Delta use. There is no statutory authority in the 209 legislation for the Delta Plan to be subject to lower protections from the Proposed Project impacts.

Section 3.4.3.1 Reliable Water Supply
Page 3-77, lines 32-37: Since the water conveyance facilities and operations are shovel ready once the BDCP EIR/EIS is permitted, the facilities and operations in the BDCP should be identified as one of the "foreseeable" projects.

Section 3.3.3.1.1 Impact 3-1a
Page 3-79, lines 1-42: Changes in reservoir operations and shifting the timing of flows through the Delta must be consistent with D-1641 and the NDWA Contract, failure to do so will be a SIGNIFICANT impact. The NDWA Contract covers water quality, water availability, water elevations, natural flow patterns, and damage from seepage and erosion.

Page 3-79, line 42: How significant are these impacts? They should be quantified. What are the mitigations needed? How will NDWA water users be mitigated pursuant to Article 6 of the NDWA Contract?

Section 3.4.3.1.2 Impact 3-2a
Page 3-80, lines 4-13: Will the de-watering have any impacts on the surface or groundwater elevations? Will this construction activity cause local wells to be contaminated? If so, this is a SIGNIFICANT impact, as most homes and business in the North Delta rely on groundwater wells for their water supply. If local groundwater supplies are disrupted or contaminated, how long will this occur and what is the alternate water supply to be provided?

Page 3-80, lines 22-32: There are numerous local wells in the vicinity of the proposed water conveyance facilities in the BDCP, so they should be mentioned here, their impacts quantified, and mitigation offered.

Page 3-81, lines 7-14: As mentioned previously, most North Delta residents rely on well water for their drinking water supply, therefore there is likely to be SIGNIFICANT impacts to North Delta water users due to "leakage of conveyance water into the underlying aquifer." These impacts need to be analyzed, quantified, and mitigated.

Section 3.4.2.1 Impact 3-1b
Page 3-83, lines 13-25, and lines 37-40: These construction and operation impacts, and increase in salinity have the potential to be SIGNIFICANT and need to be mitigated pursuant to Article 6 of the NDWA Contract.

Section 3.4.3.2.1 Impact 3-1b
Page 3-84, lines 8-11: As described here, salinity increases could violate the NDWA Contract water quality criteria.

Section 3.4.3.2.2 Impact 3-2b
Page 3-84, lines 27-31: Under the NDWA Contract, DWR is obligated to operate to the stricter water quality criteria of the NDWA Contract or SWRCB standards. This could result in less water for export. This is a SIGNIFICANT impact.

Section 3.4.3.2.3 Impact 3-3b
Page 3- 84, lines 40-44: This has the clear potential to violate the provisions of the NDWA Contract in terms of water quality and availability and would be a SIGNIFIANCT impact.

Page 3-85, lines 1-3: This has the clear potential to violate the provisions of the NDWA Contract in terms of water quality and availability and would be a SIGNIFIANCT impact.

Page 3-85, lines 31-37: This conclusion is based on the assumption that sufficient alternative water supplies are available to mitigate significant impacts. The Proposed Project EIR provides no credible evidence that such supplies exist or that they would be available and affordable when needed.

Section 3.4.3.3.1 Impact 3-1c
Page 3-87, lines 7-22: As mentioned previously the changes in salinity as a result of new intake facilities in the North Delta cannot be below the water quality criteria in the NDWA Contract. Also, the diversion of less than 1 percent of Delta inflow by the Davis-Woodland Water Supply EIR is substantially less than the percentage of Delta inflow to be captured by a 15,000 cfs facility proposed by BDCP and should be identified, analyzed, quantified, and mitigated in this EIR.

Section 3.4.3.3.3 Impact 3-3b
Page 3-88, lines 1-14: This conclusion cannot be applied to in-Delta water users as increased water exports that alter in-Delta flows and salinity gradients do have the potential for SIGNIFICANT in-Delta impacts. This violates the statutory co-equal goal of "water supply reliability for California."

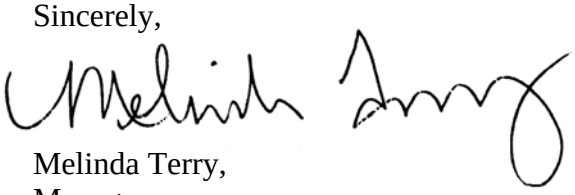
Section 3.4.3.4.3 Impact 3-3d
Page 3-90, lines 10-13: The impacts to Delta water users could be SIGNIFICANT if any of the modifications to levees and installation of barriers changes the surface water elevations or quality of water for in-Delta water users.

Section 3.4.3.5 Protect and Enhance Delta as Evolving Place
Page 3-90, lines 14-26: This section proposes a very narrow interpretation of protecting and enhancing the Delta. The legislature also specified that the co-equal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resources, and agricultural values of the Delta as an evolving place. This EIR fails to identify the SIGNIFICANT impacts from ecosystem restoration and water supply reliability or how they will be mitigated.

CONCLUSION

The NDWA appreciates the opportunity to provide our comments and concerns, but hopes the Council will consider fixing the inadequacies of the EIR as currently drafted, particularly the need to specifically quantify the individual and cumulative impacts of the projects and programs "assumed" to occur through implementation of the Proposed Project, and identify appropriate mitigations.

Sincerely,



Melinda Terry,
Manager