



## Restore the Delta

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Delta Stewardship Council  
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### **RESTORE THE DELTA COMMENTS ON THE DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT (DRAFT EIR) FOR THE FIFTH STAFF DRAFT DELTA PLAN**

Restore the Delta appreciates the opportunity to review and comment on the Draft Program Environmental Impact Report (DEIR) for the fifth Draft Delta Plan. This letter consists of Restore the Delta's observations of a few specific items within the DEIR. In addition to this individual letter, Restore the Delta in conjunction with the Environmental Water Caucus is submitting a separately transmitted joint comment letter which is incorporated by this reference. In addition to our comments below and the joint comment letter transmitted by the Environmental Water Caucus, we incorporate by reference the following comments:

- Environmental Advocates Supplemental Delta Plan DEIR Comments & Supporting Materials (Hand Delivered)
- Law Offices of Rossmann & Moore LLP
- Law Offices of Steven C. Volker
- Law Offices of Michael Jackson
- Law Offices of Lozeau/Drury LLP
- Law Offices of Lewis, Brisbois, Bisgarrd & Smith
- South Delta Water Agency
- Local Agencies Of The North Delta
- City of Stockton

Restore the Delta has been an active participant in the public process associated with development of the Delta Plan and the DEIR. Restore the Delta has submitted detailed comments on the Fifth Draft Plan in conjunction with the Environmental Water Caucus, this draft being the subject of this DEIR, as well as prior drafts of the Plan. Restore the Delta staff and supporters have made public comments at numerous public scoping meetings and

regularly scheduled Delta Stewardship Council meetings since the inception of the DSC. To date the most significant concerns over the Delta Plan, including the Fifth Draft and corresponding DEIR, have not been addressed. As the largest grassroots organization within the statutory Delta, with thousands of supporters from within the Delta and throughout the State of California, Restore the Delta is particularly concerned with the Plan and DEIR's failure to adequately address (1) performance measures; (2) BDCP impacts; (3) governance changes; (4) the Delta as place.

**1. Legislatively mandated performance measures have not yet been identified in the Plan or the DEIR.**

As cited in the City of Stockton letter:

The Delta Reform Act of 2009 provides that the Delta Plan include concrete measures to simultaneously improve water supply reliability and to restore the Delta ecosystem while protecting and enhancing the Delta as a place. Specifically, the Act requires that the Plan "include quantified or otherwise measurable targets associated with achieving the objectives of the Delta Plan. (Water Code § 85308 (b))

As of today, The Delta Plan still does not include measurable or otherwise quantifiable targets for flows into and through the Delta, for increased fish populations, or for improved Delta water quality. Thus, it is unclear to us how the Council can comply with CEQA in adopting targets. Groups like Restore the Delta, therefore, cannot then make a full and comprehensive assessment of what the impacts of the Delta Plan will be.

There is a lack of quantifiable data and, thus, the public and the Council have insufficient information with which to evaluate the differences in the proposed alternatives, especially in relation to the Public Trust Doctrine.

**2. Incorporation of the Bay Delta Conservation Plan Will Affect the Scope and Impacts of the Delta Plan.**

The Delta Reform Act directs that the Bay Delta Conservation Plan (BDCP) be automatically incorporated into the Delta Plan if the BDCP meets certain statutory requirements. Presently, the BDCP is described in the Delta Plan as covering the operation of the State Water Project, the construction and operation of facilities for movement of water through the Delta, and the implementation of conservation actions. Thus, it will be the core component of the Delta Plan. The DEIR, however, does not clearly explain how the incorporation of the BDCP into the Delta Plan will change the scope and regulatory effect of the Delta Plan. Here again, the DEIR raises more questions than it answers for the public regarding the effect of the BDCP on the Delta Plan and the potential environmental effects.

Moreover, according to CEQA Guideline 15125: Environmental Setting:

(d) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans. Such regional plans include, but are not limited to, the applicable air quality attainment or maintenance plan or State Implementation Plan, area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, regional blueprint plans, plans for the reduction of greenhouse gas emissions, habitat conservation plans, natural community conservation plans and regional land use plans for the protection of the Coastal Zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

The DEIR has not evaluated inconsistencies between the Delta Plan and the HCCP that is tied to the Bay Delta Conservation Plan, let alone inconsistencies between the Delta Plan and all Delta area general plans and county-wide habitat conservation plans.

**3. There are inconsistencies and duplication of oversight and governance between the Delta Plan and the proposed BDCP.**

The Delta Stewardship Council has used caution in interpreting its statutory mandate, and sees its role as coordinating actions of other government agencies, by simply creating a set of general policies for implementation of any actions in the Delta and evaluating consistency with these policies. The Fifth Staff Draft Delta Plan describes this role:

**Facilitation, Coordination, and Integration**

The Council has an important role as a facilitator, coordinator, and integrator of activities among the local, State, and federal agencies and other entities that affect the Delta and statewide water supply reliability. In future updates to the Delta Plan, the Council may include recommendations for governance reform necessary to support the coequal goals.

The DEIR states that the Delta Plan primarily “functions as a strategic document because it provides guidance and recommendations to cities, counties, and State, federal, and local agencies to restore the Delta ecosystem and provide a more reliable water supply for California.” The DEIR also states that the Delta Stewardship Council “does not exercise direct review and approval authority over covered actions to determine their consistency with the regulatory policies in the Delta Plan.” (Section 1.2) Instead, the Council serves as an appellate body.”

Under section 82504 of the Delta Reform Act, the council has the authority to create a coordinating committee of agencies responsible for implementing the Delta Plan.

85204. The council shall establish and oversee a committee of agencies responsible for implementing the Delta Plan. Each agency shall coordinate its actions pursuant to the Delta Plan with the council and the other relevant agencies.

The Fifth Staff Draft Delta Plan describes this coordinating committee:

In recognition that other government agencies have authorities and responsibilities that are critical to the achievement of the coequal goals, the Delta Reform Act requires the Council to establish and oversee a committee of agencies responsible for implementing the Delta Plan. The statute directs each agency to coordinate its actions pursuant to the Delta Plan with the Council and other relevant agencies. The Council will commence regular, public coordination meetings of the appropriate and interested federal, State, and local agencies and stakeholders after adoption of the Delta Plan. In addition, Council staff has met with federal agencies and is developing the Delta Plan in consultation with these agencies in order to pursue future consistency and compliance with the Coastal Zone Management Act, as required by Water Code section 85300(d)(1)(A).

According to the Delta Plan, the Delta Stewardship Council's proposed role is that of facilitator and coordinator of actions which will be originated and overseen by individual agencies. However, there is a fundamental disconnect between the Delta Stewardship Council's proposed coordinating committee and the governance structure currently proposed in the Bay Delta Conservation Plan. Without incorporation of the BDCP into the Delta Plan, the public cannot review and comment on any potential discrepancies in governance and facilitation of project operations between the Delta Council's oversight committee and the BDCP's Implementation Office.

For example, who will be ultimately responsible for overseeing conservation measures? The proposed BDCP governance plan gives the "BDCP Implementation Office" oversight over implementation of "conservation measures, including those related to protection and restoration of habitat" and "management of conserved habitat." However, we believe that the Delta Reform Act gives fundamental authority or oversight of habitat-related land management decisions in the Delta to the Delta Protection Commission and the Delta Stewardship Council, as well as responsibility to ensure that the covered actions are consistent with the Delta Economic Sustainability Plan. We would argue that it is the responsibility of the Delta Stewardship Council to ensure that any governance structure is consistent with exercising these statutory responsibilities.

Another governance issue involves the hiring of a Science Manager by the proposed BDCP Implementation Office. The Science Manager will oversee the implementation of the Bay Delta Conservation Plan. The current draft of the BDCP states:

The Program Manager, with the concurrence of the Implementation Board, will select a Science Manager to assist with the implementation of the BDCP and to ensure that such implementation decisions are guided by the best available scientific information. The Program Manager will consult with the Implementation Board and the fish and wildlife agencies and the Stakeholder Council in the selection of the Science Manager. The Science Manager will report to the Program Manager. Specifically, the responsibilities of the Science Manager include:

- Assist in the administration and implementation of the adaptive management program;
- Oversee the implementation of the BDCP monitoring and research program, with the assistance of the IEP and other science programs;
- Oversee the implementation of the BDCP adaptive management program;
- Engage in regular communication and coordination with the Delta Science Program and coordinate with the Independent Science Board, in a manner consistent with Water Code section 85820, as well as other outside scientists to gather independent scientific information and solicit input and review, as needed, and contract with the Independent Science Board or other scientists to provide such input and review, as needed;
- Support the Program Manager in the preparation of reports and other technical documents; and
- Assist in building sufficient scientific capacity and resources within the IO to advance the goals and objectives of the BDCP.

We are concerned that the specification of hiring of such a science officer in the Bay Delta Conservation Plan, and the oversight by the “BDCP Program Manager” may undermine the authority given in The Delta Reform Act to the Independent Science Board appointed by the Delta Stewardship Council. The Delta Reform Act specified that the Delta Stewardship Council should appoint an Independent Science Board and a lead scientist, with oversight authority as specified in the following sections:

(3) The Delta Independent Science Board shall provide oversight of the scientific research, monitoring, and assessment programs that support adaptive management of the Delta through periodic reviews of each of those programs that shall be scheduled to ensure that all Delta scientific research, monitoring, and assessment programs are reviewed at least once every four years.

(4) The Delta Independent Science Board shall submit to the council a report on the results of each review, including recommendations for any changes in the programs reviewed by the board.

(b) After consultation with the Delta Independent Science Board, the council shall appoint a lead scientist for the Delta Science Program.

(2) The term of office for the lead scientist shall be no more than three years. The lead scientist may serve no more than two terms.

(3) The lead scientist shall oversee the implementation of the Delta Science Program. In carrying out that responsibility, the lead scientist shall regularly consult with the agencies participating in the program..

In addition, the qualifications required of the proposed Science Manager for the BDCP Implementation Office are substantially less than those required for the lead scientist for the Delta Science Program.

The lead scientist for the Delta Science Program working on behalf of the Delta Stewardship Council is to have the following qualifications:

- (1) The lead scientist shall meet all of the following qualifications:
  - (A) Hold an advanced degree in a field related to water or ecosystem management.
  - (B) Have a strong record of scientific research and publication in peer-reviewed scientific journals in a field related to water or ecosystem management.
  - (C) Have experience advising high-level managers in science-based decision making in the areas of water management and ecosystem restoration.
  - (D) Have the capability to guide the application of an adaptive management process to resource management policy decisions in the Delta.

The proposed qualifications for the Science Officer of the “BDCP Implementation Office” are substantially less:

Minimum requirements for the Science Manager will be:

- Educational and professional background in relevant scientific disciplines,
- At least 10 years of experience in the management of large programs,
- Substantial experience and involvement in the management of large-scale research or monitoring programs,
- Familiarity with water management and ecological issues related to the Delta
- Excellent communication skills.

In particular, the requirement for holding an advanced degree in a field related to water or ecosystems management, and a strong record of publication in peer-reviewed scientific journals is noticeably absent for the proposed BDCP Science Officer. The hiring of a BDCP Science Officer without these qualifications, and the proposed delegation of the lead scientist of the Independent Science Board to a “coordinating” role in overseeing the science used in the implementation of the Bay Delta Conservation Plan could greatly weaken the use of real, peer-reviewed science in the implementation of the BDCP, and seems contrary to the intent of the Delta Reform Act.

We believe that these specific duplications in governance and project operations between the BDCP and the Delta Plan render the Delta Plan premature and incomplete. Conflicts between the BDCP implementation committee and the DSC implementation committee will result in failed management of the Delta, thereby bringing continued environmental and economic harm to Delta communities. In addition, unresolved operational issues between these committees

will result in increased and unwarranted expenditures for Delta planning, which will be passed along to California taxpayers and water users.

**4. The Delta Plan and the DEIR do not fully meet the legislative mandate of protecting and enhancing the Delta as Place.**

According to Water Code § 85301 (a) the Delta Protection Commission shall:

Develop, for consideration and incorporation into the Delta Plan by the council, a proposal to protect, enhance, and sustain the unique cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving place, in a manner consistent with the coequal goals. For the purpose of carrying out this subdivision, the commission may include in the proposal the relevant strategies described in the Strategic Plan. (b) (1) The commission shall include in the proposal a plan to establish state and federal designation of the Delta as a place of special significance, which may include application for a federal designation of the Delta as a National Heritage Area. (2) The commission shall include in the proposal a regional economic plan to support increased investment in agriculture, recreation, tourism, and other resilient land uses in the Delta. The regional economic plan shall include detailed recommendations for the administration of the Delta Investment Fund created by Section 29778.5 of the Public Resources Code.

Due to the fact that the Economic Sustainability Plan has not yet been reviewed and incorporated into the Delta Plan, the Plan and the DEIR do not fully answer the legislative mandate of protecting and enhancing the Delta as place in a manner consistent with the coequal goals. In fact, not one of the twelve enforceable actions that constitute the Delta Plan presently support increased investment in agriculture, recreation, tourism or any other resilient land uses in the Delta, but rather are in conflict with these goals.

**Conclusion**

First, the Delta Plan and the DEIR do not include measurable or otherwise quantifiable targets for flows into and through the Delta, for increased fish populations, or for improved Delta water quality. Second, the DEIR does not examine and elucidate how incorporation of the BDCP into the Delta Plan will impact the scope and the effects of the Delta Plan on the Delta ecosystem and Delta communities. Moreover, the DEIR fails the CEQA requirement for examination of inconsistencies between the Delta Plan and the BDCP.

Third, the Delta Plan and DEIR do not reconcile statutory duplications and conflicts between BDCP operations and implementation of the Delta Plan. Lastly, the Delta Plan and the DEIR are incomplete because the legislative mandate to evaluate and incorporate the Economic Sustainability Plan into the Delta Plan has not been completed.

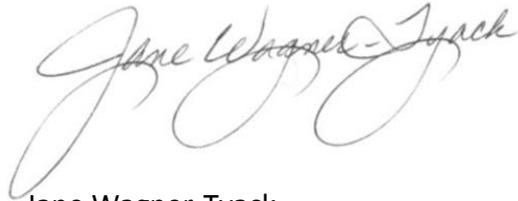
The Plan, consequently, does not meet the needs of Delta communities, the Delta ecosystem, or California citizens, who are clamoring for government agencies to fulfill their missions efficiently and in a cost effective manner. Without analysis of the BDCP, and incorporation of the Economic Sustainability Plan, the Delta Plan and the DEIR are premature and incomplete, and fail to serve the public interest.

Restore the Delta calls on the Delta Council to authorize a rewrite of the Delta Plan to address these inadequacies, as well as the inadequacies identified by other parties incorporated into our comments at the beginning of this letter.

Sincerely yours,



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CC: Phil Isenberg, Chairman  
Delta Stewardship Council