

Robert B. Leonard  
Chief Deputy County Executive

Department of Water Resources  
Michael L. Peterson, Director



Bradley J. Hudson  
County Executive

## County of Sacramento

February 2, 2012

Ms. Terry Macaulay  
Deputy Executive Officer  
Delta Stewardship Council  
980 9<sup>th</sup> Street, Suite 1500  
Sacramento CA, 95814

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### **RE: Delta Plan Draft Environmental Impact Report (DEIR) Comments**

Dear Ms. Macaulay:

Sacramento County submits the following comments on the Delta Plan Program Draft Environmental Impact Report (DEIR) and request that these comments be considered and addressed in the forthcoming Final Environmental Impact Report (FEIR).

### **GENERAL COMMENTS**

Despite far exceeding the regulatory page limit for draft environmental impact reports (300 pages for proposals of unusual scope or complexity), the DEIR fails to adequately define the project which it purports to analyze. The Delta Plan fails to define and quantify the coequal goals. What is meant by a more reliable water supply? What is meant by protecting, restoring, and enhancing the Delta ecosystem? What is meant by enhancement of the Delta as an evolving place? What are the yardsticks by which success will be documented? How can impacts and mitigation be assessed if there is no definition or quantification of those goals? The DEIR does not provide a clear path for meeting the coequal goals. It is so lacking in specifics that no quantitative assessment can be made of the degree to which the Delta Plan or its alternatives can or will meet those goals.

The DEIR fails to analyze the impact of the project on the entirety of the Project Area, generally limiting its analysis to the Delta and Primary Planning Area, rather than the more encompassing Secondary Planning Area. While the Project Area is broader than the statutory Delta as described in Water Code section 12220, the DEIR's analysis is not equally expansive in terms of growth-inducing impacts on and to the Secondary Planning Area. If the coequal goals are achieved, in whole or in part, by the Delta Plan, then growth in the affected Secondary Planning Area is reasonably foreseeable and should be addressed by the FEIR.

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The DEIR also fails to analyze the impacts of reasonably known and anticipated components of the Delta Plan, including the Bay Delta Conservation Plan (BDCP). It defers that analysis even though the Delta Plan is a condition precedent to the BDCP and the BDCP must be incorporated into the Delta Plan. While specifics of the BDCP are not fully known, it is far enough along in its process that there are sufficient details and information from which an impacts analysis can be derived.

The DEIR relies upon broad and conclusory statements that future specific projects will adequately assess the environmental impacts created by the imposition of mandatory Delta Plan policies. Furthermore, without any factual analysis, the DEIR assumes that the Proposed Project will lead to an increase in local and regional water reliability, water storage, and water quality improvement projects. However, it repeatedly defers analysis of impacts on the basis that the types of projects to be implemented are unknown. While specific projects may not be fully defined or knowable, an adequate EIR requires more than unsubstantiated assertions.

Information supplied by the DEIR does not give detailed information about the effect of the adoption of the Delta Plan that would enable interested parties to identify the real effects, ways to mitigate those effects, or feasible alternatives. Absent such information and analysis, the FEIR will not be a viable tool on a project-specific level, whether for incorporation by reference or for programmatic mitigation.

Despite its wordiness, the DEIR does not provide the requisite detailed information or analysis on which subsequent project-specific EIRs can rely. The Delta Plan is lacking in specifics, and as such, the DEIR is equally lacking. Absent quantitative assessment of the degree to which the Delta Plan or any of the alternatives will meet the coequal goals, the DEIR's conclusion that the staff alternative is superior has no factual basis.

Finally, all of the comments that Sacramento County has previously made with respect to the first five drafts of the Delta Plan continue to be applicable. A number of those comments are included by reference in this correspondence. Sacramento County is very concerned that the DEIR does not adequately address the Delta Plan's impact on land use, water resource management, ecosystem restoration, and flood control/management. Potential impacts are underestimated or ignored.

## **SPECIFIC COMMENTS**

### **EXECUTIVE SUMMARY:**

**Description of Proposed Project** (pg ES-2-3): The descriptions of the physical actions and individual projects should be expanded in the FEIR. For example:

- **Reliable Water Supply** should include water conveyance infrastructure (e.g., pipelines and canals) for general purposes. Language should also be included that indicates that this type of infrastructure is not exclusive to the BDCP project. It should also encompass the BDCP project.

- **Delta Ecosystem Restoration** should include other management activities that allow for enhanced co-existence between existing and future residents and the ecosystem (i.e., promote practices that reduce pollutant contribution to streams and/or encourage natural wildlife).

**Project Objectives** (pg ES-3): There should be an analysis of the short- and long-term viability of achieving the listed objectives. For example, the DEIR should include cost-effective practices that have scientifically verified benefits, as well as an adaptive management plan for making changes to the programs in the event that the practice is not effective in achieving the benefit(s) envisioned. There is no evidence in the DEIR demonstrating that any of the alternatives, including the Proposed Project, would attain the project objectives as required by CEQA. In fact, the DEIR acknowledges this lack on page 25-1, where it states: “The degree to which the alternatives might or might not satisfy the project objectives and be feasible is something the Delta Stewardship Council will consider at some point after the release of this program-level EIR but prior to consideration of final adoption of the Delta Plan.”

**Areas of Known Controversy** (pg ES-3): Other major controversies should be described in the FEIR. These include, but are not limited to, long-term implementation costs, how the best available science will be applied and managed, and duplication and redundancy in regulatory oversight.

## **PROPOSED PROJECT AND ALTERNATIVES (SECTION 2A):**

### **General Deficiencies**

The DEIR defines the Proposed Project as a comprehensive management plan for the Delta and the Suisun Marsh that achieves the coequal goals and all of the inherent sub-goals and objectives, as described in section 1 of the DEIR. As the County has previously articulated in its comments on the miscellaneous drafts of the Delta Plan, the Project Area included within the Delta Plan is overly encompassing in that it includes areas outside of the Delta that use Delta water. Those comments are incorporated by reference herein.

Moreover, notwithstanding this overly encompassing Project Area, the DEIR does not address the impacts to the areas outside of the Delta that use Delta water. Its analysis is primarily focused on the Delta and the Delta watershed. To the extent that the Project Area includes areas outside of the Delta, the analysis in the DEIR should be equally encompassing. It is not.

Furthermore, the project description does not include the BDCP, even though the Delta Plan is a condition precedent to the BDCP, and specifically provides that the BDCP shall be considered for inclusion in the Delta Plan. The DEIR characterizes the BDCP as a separate and distinct program from the Delta Plan, which is considered by the EIR as a cumulative project. Even though the BDCP is identified as an integral part of the Delta Plan, the DEIR defers analysis of its impacts. The BDCP is reasonably foreseeable, even if its exact location or configuration is not site-specific. As such, it should be included in the project description, and its broader

impacts (including growth-inducing impacts) should be more fully detailed, including an analysis of the impacts of a variety of large- and small-scale water conveyance and delivery alternatives and their impacts on Sacramento County and its legacy communities.

**Overview of the Plan** (pg 2A-1): The last sentence of this paragraph contains a simplified interpretation of Water Code section 85225.25 (lines 25-28). However, this section of the Delta Reform Act does not indicate that: "a State or local agency may not proceed with the project unless it submits a revised certification of consistency." This process-related question has been the subject of numerous legal discussions at Delta Stewardship Council (DSC) meetings. The DEIR is not the appropriate forum to define or interpret this statutory requirement. This reference should be deleted in the FEIR.

**Surface Water Projects** (pg 2A-7): The DEIR includes descriptions of various projects to treat, store, and convey water while vaguely referencing several policies and recommendations from the Delta Plan. This section of the project description should be expanded to include projects to improve or preserve the quality of the surface water, as well as infrastructure improvement projects that will reduce usage of surface water and provide an environmental or other benefit, even if only for specific periods of time.

**Surface Water Reservoir Projects** (pg 2A-10 through 2A-16): Most of the projects discussed and described in this section are located within the legal Delta. However, other future surface water projects located within the watershed or export area could also be expected to meet the policy objectives of the Delta Reform Act (Water Code section 85020), particularly the following objectives: (1) manage the Delta's water and environmental resources and the water resources of the State over the long term, (2) promote statewide water conservation, water use efficiency, and sustainable water use, and/or (3) improve the water conveyance system and expand statewide water storage. At a minimum, the project description in the FEIR should be expanded to describe those projects that are reported to the Federal Executive Office as part of the September 2009 "*California Bay-Delta Memorandum of Understanding among Federal Agencies*," the December 22, 2009 "*Interim Federal Action Plan for the California Bay-Delta*," and the "*Interim Federal Action Plan Status Update for the California Bay-Delta: 2011 and Beyond*."

**Recycled Wastewater and Stormwater Projects** (pg 2A-21): This section cites the State Water Resources Control Board's (SWRCB) Recycled Water Policy and declaration that it is wasteful not to use recycled water. The FEIR should address the potential impacts of the SWRCB's conflicting water rights policies that limit the ability to "divert" water from wastewater treatment facilities for this purpose rather than discharging it into rivers and streams.

**Water Transfers** (pg 2A-23): This section of the DEIR does not adequately describe or evaluate the potential environmental impacts resulting from water transfers within the Sacramento region, nor does the DEIR provide the appropriate mitigation measures and/or best management practices (BMPs). Therefore, the FEIR should include a discussion and analysis of alternative strategies that could result in the use of water transfers to improve regional self-reliance as a part of that region's IRWMP. For example, an emergency transfer for drought relief

might be subject to a different and distinct set of environmental impacts than would a transfer between water districts.

**Water Use Efficiency and Conservation Program Implementation** (pg 2A-27): The DEIR does not analyze or describe the link between the Delta Plan's proposed water use efficiency and conservation policies and recommendations and existing State and Federal codes and regulations. As a result, the FEIR should include an analysis of the potential impacts (e.g., implementation disconnects) that could result from multi-agency implementation of these policies.

**Floodplain Restoration** (pg 2A-27): The DEIR needs to describe and analyze the potential impacts to the Delta's socioeconomics resulting from the list of Ecosystem Restoration and Risk Reduction policies and recommendations cited in lines 2 and 3.

**Delta Ecosystem Habitat Restoration Projects** (pg 2A-33): The DEIR focuses on fish-related protection and does not describe or evaluate the potential impacts to other aspects of the ecosystem, such as wildlife and vegetation. For example, because agricultural activities and land uses support and provide habitat for various species of flora and fauna, the FEIR should discuss agricultural-related ecosystem habitat restoration as potential mitigation for lost habitat.

**Modification of Flow Objectives and Flow Criteria in the Delta and Delta Watershed** (pg A-38): The DEIR must include a science-based analysis of the flow patterns necessary to keep the Delta's ecosystem sustainable year-round.

**Flood Risk Reduction** (pg 2A-47): The DEIR does not adequately address or evaluate the impacts of Delta Plan Policy RR P3 and accompanying Table 7-1. The County has previously commented that Table 7-1 oversteps the intent of the covered action provision of the Delta Reform Act, as well as the local land use and permitting process. Furthermore, the DEIR does not analyze or evaluate the socioeconomic impacts of precluding the issuance of building permits for new structures in accordance with the FEMA-approved Sacramento County Floodplain Management Ordinance. The County's letter dated August 24, 2011, sent to DSC chairperson Phil Isenberg is incorporated by reference herein.

**Dredging** (pg A-48): The DEIR fails to analyze and evaluate the dredging activities requested by local Reclamation Districts despite potential benefits that could assist in managing water quality and fish spawning. Furthermore, the DEIR does not discuss or analyze the potential environmental impacts of dredging or information linking to mitigation measures or permit streamlining /management.

**Removal of Agricultural Land** (pg 2A-49): State DWR recently released the Public Draft of the 2012 Central Valley Flood Protection Plan and the December 2011 Flood Control System Status Report. A major flaw of DWR's economic analysis of the proposed projects is that it based the impacts solely on property value rather than the overall economic impact that those properties would have on the Delta region. The DEIR does not adequately analyze the magnitude of economic loss to the region, and the State, for land taken out of agricultural

production due to conversion to floodplain restoration, water supply projects and/or ecological restoration or other related uses.

**Reservoir Operations** (pg 2A-51): The DEIR neither includes nor evaluates the reoperation of facilities to address flow criteria and ecological issues cited in studies conducted by State DWR and other State and Federal Agencies. For example, the Delta Science Program studied this issue and received a mandated annual report of the status. These studies and any conclusions should be included in the FEIR.

**Overview of the Economic Sustainability Plan** (pg 2A-52): The Delta Protection Commission (DPC) has made substantial progress in completing the Economic Sustainability Plan, and this information should be incorporated into the Delta Plan and analyzed in the FEIR.

### **WATER RESOURCES (SECTION 3):**

According to the DEIR, the use of pesticides on agricultural lands upstream of the Delta and in the urban areas is contributing to water quality/toxicity problems in the Delta (pg 3-11, lines 32-41). However, the DEIR fails to note that the United States Environmental Protection Agency and the California Department of Pesticide Regulation have sole authority to establish rules and limitations regarding pesticide registration and usage. These agencies have a responsibility under their statutory mandates to exercise their authority for preventing aquatic toxicity caused by urban uses of registered pesticides. In addition, the DEIR does not acknowledge that BMPs typically available to municipal stormwater permittees are generally limited to public education, pollution prevention activities, and control of in-house municipal pesticide use which are likely insufficient to prevent pesticide impacts of registered pesticides that are not adequately mitigated through Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

The DEIR also fails to analyze potential impacts resulting from increased use of groundwater that could occur if surface water supplies are reduced by Delta Plan implementation. The potential adverse impacts of the proposed project's reduction of surface water supplies on conjunctive use programs and mitigation of groundwater contamination are not identified or evaluated in the DEIR.

### **BIOLOGICAL RESOURCES (SECTION 4):**

The DEIR does not identify or analyze the impacts of Delta Plan Policy ER P3 on the South Sacramento Habitat Conservation Plan (SSHCP). It is anticipated that approximately 40 percent of available agricultural lands that are within the SSHCP's targeted mitigation inventory area must be protected and remain in active agricultural use to offset impacts that occur within designated urban boundaries. A large portion of land within the mitigation inventory area also occurs within that portion of the Delta that is targeted under the Delta Plan for habitat restoration.

Should agricultural uses be precluded from this area, or converted and thus considered not available as mitigation, the acquisition area for the SSHCP will shrink. The end result being the

percentage of agricultural lands within the mitigation inventory area that would need to be protected increases dramatically, approaching 90 percent. Preservation of 90 percent of agricultural land within such a limited area is not achievable in Sacramento County. However, the DEIR does not acknowledge, discuss, or adequately evaluate the impacts of ER P3 on implementation of the SSHCP and its mitigation inventory.

The DEIR fails to include mitigation measures that will address/offset the potential acreage shortfalls. The Delta Plan anticipates restoring lands to a natural habitat that have been identified by Sacramento County as being essential for mitigation for loss of farmlands. The FEIR should include mitigation for the loss of agriculture as a result of Policy ER P3. Conversion of farmlands to habitat will dramatically reduce the inventory of agricultural lands that are potentially available for mitigation. The reduction in mitigation opportunities could mean that certain covered activities may not be able to find suitable mitigation or mitigation may become cost prohibitive due to a constrained inventory.

The DEIR should also analyze ER P3's potential impact on agricultural production. Also, by precluding the construction of agricultural facilities and infrastructure in areas designated for agricultural use, the Delta Plan could effectively compromise the long-term feasibility of agricultural operations in the area. Once the integrity of the infrastructure is compromised, farms could begin to disappear, and agricultural production could cease.

**DELTA FLOOD RISK (SECTION 5):**

Section 5.3.5.1.2 of the DEIR (pg 5-13) does not accurately describe the FEMA-designated floodplain. Delta levees have a long history of protecting the Delta communities from a 100-year flood event (i.e., 1 percent annual recurrence flood) and as a result are currently deemed "accredited" on the FEMA Flood Insurance Rate Maps. However, the levee system in the Delta is in the process of being de-accredited by FEMA. The forthcoming (April or May of 2012) FEMA special flood hazard area designation will preclude the County from issuing building permits for new construction or reconstruction in accordance with the traditional architectural style or at current base floodplain elevations within these legacy communities,. The DEIR does not adequately evaluate flood protection alternatives that ensure the longstanding socioeconomic structure of the Delta (i.e., "Delta as a Place") will be maintained and enhanced.

The DEIR also fails to adequately address and evaluate emergency response and notification procedures for recreational users.

The uncertainty associated with the implementation of RR R4 has the potential to significantly alter the working landscape and land use pattern in the Delta. Nevertheless, the DEIR does not analyze or evaluate the potential impacts on existing residential uses, businesses, and farming operations in the Delta.

## **LAND USE AND PLANNING (SECTION 6):**

**Analysis of Project Area (Section 1):** The County has provided the DSC with a series of written comments (on the draft Delta Plan), expressing significant concerns about overreaching geographic boundaries illustrated on the “Project Area” map (figure 1-1). The Delta Plan Purpose and Project objectives (section 1.1), for example, focus on objectives that affect only the primary and secondary zones of the Delta, a much more limited area than the proposed Project Area. The DEIR does not adequately assess the impacts resulting from the application of what is tantamount to a statewide implementation area. Of particular concern are the significant socioeconomic impacts that will result from implementation of the Delta Plan’s proposed land use regulations and policies. However, those are not discussed in the DEIR.

**Sacramento County General Plan:** The DEIR does not discuss or analyze impacts triggered by the County’s recently adopted General Plan. Some of the policy changes are significant and may apply to the Delta, including expansion of the list of agricultural lands protected under County policy (Agricultural Element). Other Delta-centric policies are found in the Conservation, Safety and Economic elements (e.g., tree protection, drainage plans, wetlands/oak woodlands, water supply, historic preservation, AG-Tourism). Any potentially significant policy inconsistencies should be described and analyzed in the DEIR.

To avoid impacts to the County’s land use planning process (and resulting growth, investment, and economic development), it is critical the environmental analysis evaluate the Delta Plan’s land use-related policies and recommendations. While the DEIR includes limited discussions of the covered action provision and consistency certification process, it is absent a substantive analysis of the potential impacts of a State agency (e.g., the DSC) usurping the local land decision-making process. In particular, the County is concerned the DEIR failed to adequately analyze the impacts of the following terms and process:

- **Definition of “Covered Action” and Consistency Certification:** The covered action definition continues to evolve. While defined and discussed in general in the DEIR (pgs 2A-2 and 2B-1), there is still a great amount of uncertainty about the DSC’s ultimate interpretation of the types of projects that will be subject to the consistency certification process set forth in Water Code section 85225. The County has provided the DSC with written comments on the various releases of the draft Delta Plan and subsequently has had one-on-one meetings with DSC staff that clearly and succinctly describe concerns about the covered action definition. Our previous correspondence dated April 15, May 6, June 23, July 12, August 25, and September 30, 2011, is incorporated by reference herein. Absent a clear definition of a covered action, no meaningful analysis can occur of the potential short- and long-term impacts on the local land use planning process.
- **Certification of Consistency Appeal Process (Sections 1.2 and 2.1):** As currently described, the process potentially grants to the DSC veto authority over local land use decisions on covered actions that are inconsistent with the coequal goals and pose a risk to people and property in the Delta. The DEIR does not include an assessment of the

impacts this new appellate process will have on the local land use governance structure and/or the resulting socioeconomic impacts.

#### **AGRICULTURE AND FORESTRY RESOURCES (SECTION 7):**

The DEIR did not effectively analyze or evaluate the impacts of the Delta Plan's proposed policies and recommendations on the economic stability and growth of agriculture even though agriculture is the predominant land use in the Primary and Secondary Zones within Sacramento County. See the DPC draft Economic Sustainability Plan (ESP).

The DEIR treats/addresses the removal/conversion of agricultural land as merely a numeric reduction in agricultural acreage. However, it fails to recognize that there is a tipping point at which time the removal or conversion of viable agricultural lands will result in the reduction of agricultural production in Sacramento County. The DEIR does not evaluate the potential socioeconomics associated with the erosion of one of the County's key industries.

Nor does the DEIR address the fact that conversion of productive agricultural land into floodplains or natural habitat will require the use of buffering techniques or setbacks on the agricultural land that is contiguous to that environment, thereby increasing the amount of land removed from production, beyond the acreage that will be converted to floodplain or habitat. No analysis of the impacts associated with such loss is contained in the DEIR.

The year-round maintenance of the local circulation network and the availability of a high quality water supply are critical components to supporting the local agricultural industry. However, the DEIR does not adequately address the importance of transportation and water quality to agriculture.

Lastly, the DEIR currently overemphasizes the forestry element when there is essentially no forestry per se in the Delta. With the exception of riparian woodlands habitat and a small (72-acre (approx.) eucalyptus biomass production site, there is no other forestry in the Delta. However, the DEIR seems to infer that the protection of forestry in the Delta is on equal footing with the need to maintain and enhance the existing agricultural industry. It is not.

#### **POPULATION AND HOUSING (SECTION 16):**

According to the DEIR, "the Delta Plan alternatives would not directly result in construction or operation of projects or facilities and therefore would result in no direct population and housing impacts" (pg 16-15, lines 4-5). While this may be the case, the Delta Plan proposes to include land use and flood risk reduction policies and recommendations that have the potential to significantly alter the residential development approval process in the legal Delta. However, the proposed mitigation described in section 16.4.3.6 (pg 16-28, lines 9-19) only addresses affordable and replacement housing. The DEIR does not define "affordable housing" nor adequately analyze how the potential for limiting new residential growth to a very limited set of housing types (e.g., affordable housing) will impact the overall socioeconomics of the Delta.

**RECREATION (SECTION 18):**

The DEIR (pg 18-12, lines 11-24) references recreation improvement/enhancement programs required by both SB 1556 (2006) and AB 1426 (2007), but does not adequately evaluate how the implementation of these legislative mandates (e.g., Great Delta Trails and the Central Valley Implementation Plan) will be consistent with the Delta Plan, specifically the coequal goals objective and the new project consistency certification process.

**TRANSPORTATION, TRAFFIC AND CIRCULATION (SECTION 19):**

The DEIR concludes that: “[T]he Proposed Project (Delta Plan) and alternatives would not directly result in construction or operation of projects or facilities, and therefore would result in no direct transportation impacts” (pg. 19-17, lines 4-5). However, the DEIR has not adequately addressed or evaluated County-specific concerns previously communicated in the County’s January 27, 2011 comment letter on the Notice of Preparation of the DEIR for the Delta Plan. The FEIR should include a specific analysis as to what effects the Delta Plan will have on access into and out of the Delta. More specifically, the DEIR has not adequately evaluated or analyzed the following: (1) how will levee failures and mean sea level rise affect circulation, (2) will all roads remain passable for vehicles (e.g., for farm-to-market activities, emergency evacuation, etc.), (3) will there be any roads that will have to be realigned, and if so, what is the required right-of-way, and (4) who (what agency) will be responsible for funding these roadway-related actions? Depending on the results of the analysis, the FEIR must include the appropriate mitigation measures.

In addition to these potential circulation-related impacts, there are also potential impacts to roadway maintenance that the DEIR has failed to adequately analyze. As a result, the FEIR should address any and all maintenance issues related to the Delta Plan as well. At a minimum, this analysis should include the impacts to roadways by any heavy equipment used to do work on the levees for the Delta Plan. For example, how will heavy equipment affect and accelerate the degradation of the existing roadways in the Delta?

In closing, Sacramento County appreciates the opportunity to share its comments on the Delta Plan’s DEIR and looks forward to seeing how they are addressed and/or incorporated into the Final EIR or, if necessary, in a recirculated DEIR. Should you require additional information, please contact Don Thomas, Senior Planner, at (916) 874-5140.

Sincerely,  


Robert B. Leonard  
Chief Deputy County Executive

Ms. Terry Macaulay  
Delta Plan EIR Comments  
February 2, 2012  
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cc: Michael Peterson, Director, Sacramento County Department of Water Resources  
Michele Bach, Office of the County Counsel  
Cathy Hack, Sacramento County Department of Environmental Review & Assessment  
Mike Penrose, Director, Sacramento County Department of Transportation  
Juli Jensen, Sacramento County Agricultural Commissioner