

From: firelady1@sbcglobal.net
To: [Delta Council EIR Comments](#)
Subject: Fw: Re: Fwd: EIR
Date: Monday, October 22, 2012 9:06:25 AM

With corrected email address for BIMID.

Subject: EIR

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10-20-2012

VIA: US Mail and e-mail "Draft EIR"
eircomments@deltacouncil.ca.gov

DEIR Comments
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, Ca. 95814

Re: Comment on Delta Plan Draft Program EIR

Bethel Island Municipal Improvement District is pleased to submit the following comments on the Draft Delta Plan Program EIR ("DDPPEIR").

As stated, the Delta Plan is a suite of twelve regulatory policies (that would have the force of law once adopted as State regulations) and sixty-one nonbinding recommendations, which collectively constitute the proposed Project. The policies and recommendations do not contain a list of physicals projects to achieve the coequal goals (of ecosystem protection and water supply reliability).

Rather, they are statements of policy direction to other agencies which, if the direction is followed, could lead to types of specific physical actions.

At such time when the Delta Plan proposes physical projects to achieve the coequal goals, BIMID will have comments on these projects and their environmental impacts, BIMID therefore reserves its comments until such time as these projects are presented for public review and comments.

BIMID is one of eight western Delta islands considered by the California Department of Water Resources to be critical to Californians drinking water supply and quality. The Delta is the hub of the State's water distribution system. About two thirds of all Californians and millions of acres of irrigated farmland rely on the Delta for water from the State Water Project and federal Central Valley Project. Delta water is vital to California's economy, fifth largest in the world, and its growing population which is expected to reach 53 million by 2030. BIMID is responsible for maintenance and operation of the 11.5 miles of levees around the perimeter of Bethel Island.

The EIR evaluates types of physical actions rather than an exclusive list of physical actions, because the Delta Plan does not propose or encourage any such specific list nor can one be inferred. This approach of refusing to define the project that would be specifically included under covered action on one hand and then providing another list, and then stating that list is not complete is inconsistent with CEQA. "An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." (McQueen v Board of Directors (1988) 202 Cal.App.3d 1136, 1143).

The DEIR'S Thresholds of Significance are not Appropriately Tailored to the Project.

CEQA encourages lead agencies to develop and publish thresholds for significance (CEQA Guidelines, 15064.7) Even if a lead agency does not formally adopt thresholds of significance, it must develop thresholds that assist it in evaluating the environmental impacts of a given project. (See. e.g., Oakland Heritage Alliance v. City of Oakland (2011))

195 Cal. App 4th 884, 499.) The DEIR for the Draft Plan however, refers primarily to the sample questions contained in Appendix G of the Guidelines without regard to the types of impacts most likely to occur to the geographic area affected by the implementation of the project.

Appendix G " is only an illustrative checklist and does not set forth an exhaustive list of potentially significant environmental impacts under CEQA or standards of significance for those impacts." (City of San Diego v. Board of Trustees of California State University (2011) 201 Cal. App 4th 1134, 1189-1192 (San Diego), citing Protect the Historic Amador Waterways v. Amador Water Agency (2004) 116 Cal. App 4th 1099.1110-1111.) In the San Diego case, the court struck down an EIR for failing to consider the effect of a project on a transit system despite the fact that appendix G does not list a threshold relating to that impact. (201 Cal. App 4th ar 1191-1192.) Moreover, the lack of precise quantification or criteria for determining whether an environmental effect is "significant" under CEQA does not excuse a lead agency from using its best efforts to evaluate whether an effect is significant". (San Diego, supra, citing Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs. (2001) 91 Cal. App. 4th 1344. 1370; see also CEQA Guidelines, 15144,15145.).

The DEIR fails to include any policies or recommendations relating to the conveyance component of the BDCP and the significant impacts on the Delta and Bethel Island.

Shoving analysis of the BDCP as it relates to the implementation of the Delta Plan under the rug thwarts the public disclosure requirements of CEQA. The failure to proceed in a manner required by law standard of review applies when a lead agency fails to include relevant information environmental analysis. A lead agency's failure to comply with informational disclosure requirements constitutes a prejudicial discretion when the omission of relevant information has precluded informed decision making and informed public participation. (Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal. App4th 1184, 1197-1198.).

The California Supreme Court has deemed that the

omission of information prejudicial unless such information omitted should be repetitive, irrelevant, or supportive of the agency's decision because courts are generally not in the position to assess the importance of omitted information. (Environmental Protection Info. Ctr. v. Dept of Forestry (2008) 44 Cal.4th 459, 487, citing Pub. Res. Code 21005(b) and Rural Land Owners Assn v. City Council (1983) 143 Cal.App3d 1013,. 1021. Moreover, "an EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences" (CEQA Guidelines 15151; see also Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692.712.) Yet, a straightforward analysis of the potential impacts of the BDCP as it relates to implementation of the Delta Plan is absent from the DEIR.

The above statements outline the impact, but fails to meaningfully analyze at the problematic level the potential for levee failure in the eight western Delta Islands due to climate change and sea level rise. Consequently, the DDPPEIR fails its duty under CEQA to propose mitigation measure related to this impact. The potential catastrophic causal chain of impacts on the states drinking water supply, California's economy and ultimately the national economy demands a more thorough, thoughtful analysis in DDPPEIR. But most importantly, the analysis must identify mitigation measures to reduce these impacts in order to fulfill its obligation under CEQA.

The district also ask , that the comments in the DDPPEIR, regarding the status of our FEMA eligibility be removed from the document, (chapters 5 and 7).

In closing thank you for this opportunity to comment on the DDPPEIR.

Sincerely,

Bethel Island Municipal Improvement Dirstrict

