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December 27, 2011

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Subject: Response to Covered Action Work Session December 9, 2011


Dear Mr. Grindstaff,

Contra Costa Water District (CCWD) appreciates the effort that staff has dedicated to addressing the concerns of stakeholders regarding Covered Actions. At the December 9th Covered Actions workshop you indicated that you would accept written comments requesting exemptions or clarifications by January 1st and that those received will be reviewed and presented to the Council for consideration. At that workshop you also indicated that you anticipate 10-15 Covered Action consistency determinations to be filed with the Council each year. Unless more explicit exemptions are made, this estimate falls short of the number of consistency determinations that local governments within the Delta believe could be required for the myriad of local projects anticipated. Explicitly expanding the types of projects that are exempt and the rationale for exemption through an adopted policy will facilitate greater understanding and cooperation among agencies to ensure that the coequal goals are met while minimizing unnecessary bureaucracy. CCWD requests that the Council address the following issues related to Covered Actions:

CEQA Categorical Exemptions

CCWD strongly urges the Council to exempt the CEQA categorical exemptions from Covered Action status as they have already been broadly interpreted to have no significant impacts. Since CEQA requires examination of impacts to water supply and the environment, any project that is exempt under CEQA would by definition not affect either of the co-equal goals. The Delta Plan could include language indicating that these exemptions are not absolute and that there may be exceptions based on the nature or location of the project. Providing specific examples, if they can be found, would be useful in clarifying this aspect. Crafting the exemptions to the Delta Plan consistency determination requirement to be consistent with CEQA will save the Council and local government time, resources and money with no appreciable impact

to the achievement of the coequal goals. If the Council determines not to exempt CEQA categorically exempt actions, the Delta Plan should contain language that describes the rationale and the type of projects it anticipates could be categorically exempt from CEQA, but would be considered Covered Actions.

Clarification for Specific Example

At the Covered Actions workshop CCWD asked for clarification about a specific example and received mixed responses from staff. CCWD owns and operates two drinking water treatment plants: the Randall-Bold treatment plant is located within the Delta and the Bollman treatment plant is not. Both plants receive water from CCWD intakes located within the Delta.

The Randall-Bold Water Treatment Plant was built in 1992 in Oakley and is jointly owned by CCWD and Diablo Water District (DWD). The Randall-Bold plant provides treated water to DWD, and by contract, to the Cities of Antioch and Brentwood, Golden State Water Company (Bay Point), and new growth in Central County. The plant currently has a capacity of 50 mgd but was designed to be expanded in the future to an ultimate capacity of 80 mgd. The original EIR/EIS for the Randall-Bold Treatment plant was completed in 1989 and evaluated the ultimate expansion up to 80 mgd of plant capacity on land previously purchased for the expansion as noted in the EIR/EIS.

DWD intends to increase its capacity to treat surface water to supply potable water for future development. Neither CCWD nor DWD have land use authority, and any expansion of treatment capacity would be in response to other actions taken by Contra Costa County or cities to allow growth within the DWD service area. Such actions would be presumably subject to Council review as Covered Actions to the extent that they are in the Delta.

CCWD and DWD both intend to meet the 20% by 2020 conservation requirements consistent with SB7x-7; in fact, if current demand levels continue, both agencies are likely to reduce demands by more than 20% by 2020. However, high levels of water efficiency would not preclude the need for additional potable water at some point. It is anticipated that DWD, as shown in their latest Urban Water Management Plan, will need 5 mgd additional capacity in 2020 and 2030 in order to meet new water demands and water quality blending goals for their groundwater system. Expansion of DWD's share of the plant capacity can be accommodated without changing current water supplies and diversion rights, without adding to existing water rights, and without expanding capacity of conveyance, storage or other infrastructure except that required to distribute water within DWD's system to the new demands.

The capacity increase would be for meeting demands in a certain area within the statutory Delta, but it would be done under currently approved General Plans and anticipated growth.

Based on the example described above, CCWD requests answers to the following questions:

- a. Would the expansion of the Randall-Bold water treatment plant capacity to serve growth within the Delta be considered a Covered Action?
- b. If so, would a consistency determination be required each time the plant is expanded by 5 mgd?
- c. At what point in the planning process should a consistency determination be filed? Would a determination be made when projects are approved that would lead to an eventual expansion (i.e., done by the agencies with Land Use authority)?
- d. Would expanding Randall-Bold treatment capacity for serving areas outside of the Delta (for example, the Concord Naval Weapons Station, scheduled for development in the next ten years) be considered a Covered Action, and why or why not?
- e. Would expanding CCWD's Bollman treatment plant capacity, located outside of the Delta, instead of expanding Randall-Bold, for service to the Concord Naval Weapons Station be considered a Covered Action?
- f. If service to the Concord Naval Weapons Station (outside of the Delta) is considered to be a Covered Action because it would deliver water diverted from the Delta, does this mean that a modification to a treatment plant in Los Angeles or Bakersfield or Santa Clara County that treats water diverted from the Delta is also a Covered Action?
- g. If the expansion of treatment capacity is in response to an action taken by other entities with Land Use authority in the Delta, and those actions are approved as Covered Actions by the Council, would the treatment plant capacity expansion be considered an approved Covered Action because it was integral to the first approval?
- h. Would a change in treatment process (e.g., conventional treatment to membrane filtration) that does not change the plant capacity be considered a Covered Action?

This issue is not unique to CCWD or DWD; the approval of a development within a City (or even the development of already approved projects in approved land use areas) will lead to numerous infrastructure improvements: roads, sewers, water and power service, schools and parks. If the policy concerning Covered Actions is not carefully crafted, a staggering amount of "new process" that is duplicative and adds no value could result.

Delta Stewardship Council
Covered Actions Work Session December 9, 2011
December 27, 2011
Page 4 of 5

CCWD appreciates your consideration and response. Please call me at (925) 688-8100 or Maureen Martin at (925) 688-8323 if you have any questions or concerns.

Sincerely,



Greg Gartrell
Assistant General Manager

GG/MM

cc: Mr. Mike Yereka, Diablo Water District

Delta Stewardship Council
Covered Actions Work Session December 9, 2011
December 27, 2011
Page 5 of 5

bcc: Mr. Jerry Brown