



January 28, 2011

Ms. Terry Macaulay
Delta Stewardship Council
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Sacramento, CA 95814
via email: deltaplanscoping@deltacouncil.ca.gov

RE: Delta Plan EIR Scoping Comments

Dear Delta Stewardship Council Members:

Thank you for the opportunity to comment on the Notice of Preparation for the Environmental Impact Report on the Delta Plan you will be preparing this year. The following reflects preliminary environmental justice comments on behalf of the undersigned organizations based on the information available in the NOP. **We urge you to make another comment period available once actual alternatives are identified to allow for more substantive comments.**

Solving the water challenges in California is a necessary prerequisite for the health of the State's environment, people, and economy. This Delta Plan may be our last chance to find a sustainable, equitable solution and we cannot afford to fail. **The stakes are high and our strongest recommendation is that potential impacts and opportunities be thoroughly analyzed, particularly those most likely to affect environmental justice communities.** We understand that this will be a challenge given the short time-frame and effort to do both the Plan and EIR simultaneously, and urge you to waste no more time in undertaking your responsibility to identify and assess environmental justice within the framework of this Plan.

Accomplishing an adequate analysis of environmental justice will require a change in the standard dynamic governing Delta policy-related thinking. Past policy efforts have failed almost entirely. The Little Hoover Commission determined that the environmental justice work plan in CALFED was an "embarrassing failure." (LHC, 2005, pp. 82) Although the Delta Vision Stakeholder Coordination Group succeeded in identifying important environmental justice considerations, the final Delta Vision Strategic Plan had exactly two mentions of environmental justice and neither contained any specific recommendations. **We urge you to assure that this EIR process and the Plan set a higher standard of full inclusion of environmental justice analysis.** Our more detailed comments are below.

Project Description

It is impossible to provide adequate scoping comments on a project that is only partially described. In addition to our recommendations, below, as mentioned above, we urge that an additional round of public comments be solicited once the alternatives have been assembled.

We urge that the Delta Plan incorporate the following:

Identification of environmental justice and disadvantaged communities and all tribes (recognized or unrecognized) that may be effected by policies and projects contained in the Delta Plan. To do this, the Plan must identify tribes and disadvantaged communities located in both the primary and secondary planning areas of the Delta, and then analyze the impacts of each component of the plan on these communities.

The broad brush-strokes reflected in the NOP have already obfuscated communities and Tribes. Identifying disadvantaged communities and tribes requires some expertise and intentional focus. For instance, the list of Tribes contained in the appendix is missing a number of Tribes. The most obvious is the Winnemem Wintu Tribe. The Winnemem participated in CALFED and held a seat on the Delta Vision Stakeholder Coordination Group, but was left off the list of Tribes in the Appendix of the NOP. Also left off are numerous small water systems in the secondary planning area that cannot provide safe drinking water to their customers.

Acknowledgement that groundwater quality and supply in the Central Valley are inextricably linked to the health of the Delta. One of the central rationales for construction of the Central Valley Project was to reduce overdraft of groundwater aquifers in the Central Valley. The amount and quality of water available from the CVP and the State Water Project have a direct impact on water quality and supply in the Central Valley. Equitably balancing water needs in the plan will require an integration of groundwater management, both for supply and for quality. This dynamic should be identified and defined in the project description.

Plan Objectives

The objectives described in the Notice of Preparation reference State Statute exhaustively. The statute, however, leaves a great deal of room for interpretation. We urge you to develop objectives that reflect the broadest interests of the State. We believe that this is possible without violating the context of the existing statutes. The co-equal goals are the preeminent example. Providing a “reliable water supply for California” is a very broad charge. The implication in the NOP is that reliability is being focused on reliability for water contractors. However, the interconnectedness of California’s water resources across the State and the broad charge provide the Council with the opportunity to address water supply reliability more broadly. We particularly advise that the Council include water supply reliability for existing communities that are currently without a safe, affordable water supply for basic human needs.

Impacts

We support the Council's efforts to conduct the CEQA process, in as much as possible, in a manner that will meet the requirements of NEPA. We particularly urge you to conduct the environmental justice analysis to meet NEPA requirements. We also support the Council's commitment to assess financial impacts even though that is not part of the traditional CEQA/NEPA process. Below are specific impacts that should be assessed.

Analyze and account for all potential water quality impacts both in the Delta and in the larger Delta watershed. Water quality and water supply are inextricably linked. The engineering of our statewide water system has created an interconnected system that spans almost the entire state. While this creates a complex ball of twine making it challenging to identify the diffuse impacts of a pull on one string, the EIR process must tease out these impacts. For instance, water quality will vary considerably according to the alternative under review and also according to location. At a minimum, this analysis should include;

- The potential that ecosystem restoration in the Delta will increase the methylation of mercury – and identify which communities such an increase would impact – for instance, those that rely on the Delta for fish for subsistence.
- The impacts on the availability and quality of groundwater, particularly for communities without any other supply of drinking water. There are numerous communities up and down the Central Valley that watch high quality surface water flow through their backyards while they are forced to rely on contaminated groundwater for all of their basic needs including drinking, cooking, and bathing. Existing Delta policy has contributed to and exacerbated the struggles these communities face which lead to overdraft of groundwater. These communities would be particularly impacted by alternatives that control flow within and exports from the Delta but do not include strict groundwater management requirements.
- The impacts of changes in salinity in the Delta on existing Delta communities and on the viability of fish, particularly salmon, making their way through a Delta with significant water quality impairment. Much attention has, justifiably, been focused flows in the Delta. Flows are inextricably linked to water quality; however, it is necessary to focus specific attention on the impacts of changes in Delta water quality across the alternatives considered.

Analyze financial impacts, particularly on environmental justice communities. There are numerous elements of this Plan that may create new costs to communities and individuals. California is littered with communities that already pay unaffordable water rates, and many of those communities are paying high rates for water they cannot safely drink. This EIR should analyze the potential impacts of changes in water availability, water quality, and infrastructure on water rates for all communities, but especially for environmental justice communities. In addition, any discussion of a statewide common goods charge should include careful analysis of the costs and benefits accrued to environmental justice communities not likely to see any benefit from this statewide investment, but likely to bear a disproportionate burden. When analyzing a public good charge we urge you to consider the following:

- Creation of a statewide lifeline water rate that would make water affordable for all environmental justice community members;
- Exempting environmental justice community members that are eligible for the lifeline water rate from paying the public goods charge; And,

- Assuring that some proportion of the funds collected go toward assuring water supply reliability for those communities currently without safe, affordable water for their basic human needs like drinking, bathing, and cooking.

Analyze potential impacts of catastrophic events scaled to capture the particular impacts on environmental justice communities. Environmental Justice Communities are particularly vulnerable to catastrophic events due to historic land use patterns and limited resources available to retrofit or improve structures. They are also the communities least likely to be able to recover from catastrophic events. Careful analysis is necessary to identify these communities and to determine the likely impacts which will differ from those impacts likely to be assessed for more resourced communities.

Mitigation

We are hopeful that a strong analysis and well developed alternatives will avoid most negative impacts on environmental justice communities. Where negative impacts are unavoidable we suggest the following mitigation measures.

Mitigate water quality impacts. Where further Delta water degradation is expected, this EIR should have a plan for mitigating those impacts that is focused on effective exposure reduction, not simply posting signs and leaving community members to fend for themselves. Critical to any mitigation plan is appropriate design of the project and monitoring of features such as wetlands to determine whether there is an increase in bioavailability. Appropriate mitigation may include providing alternative sources of free fish, identifying accessible areas where fish contamination may be less prevalent, or developing new fishing stock in local lakes or ponds that are not contaminated.

If continuing degradation of drinking water supplies, both ground and surface water, are unavoidable then the Plan should include a process to either connect communities to less contaminated supplies or to assure that the costs of treatment are not born solely by the community receiving the degraded water.

Mitigate water supply impacts. The alternative that includes reduction of diversions of the Delta should include mandatory groundwater management to mitigate the increased pressure on groundwater resources that would occur should diversions be reduced.

Mitigate potential costs transferred to communities because of Delta management policies. Many activities in the Delta and around the Delta watershed transfer costs to communities. For instance, contaminants allowed to be discharged into the system create costs downstream when the next community has to treat to remove those contaminants. Currently the costs are born entirely by the downstream community. In this EIR process those costs should be assessed, particularly when they impact disadvantaged communities, and mitigation measures should be developed where the discharge is deemed unavoidable.

Mitigate potential impacts of catastrophic events scaled to address the particular impacts on environmental justice communities.

Unavoidable impacts of catastrophic events must be identified and mitigated at a scale that captures the particular needs of environmental justice communities. For instance, there are numerous farm camps in the Delta. Those living in the camps tend to be monolingual Spanish speakers and not to have any kind

of insurance on their belongings. Historically, those communities have not been considered in emergency response plans. As plans and decisions are made, regarding which levees to repair and which to allow to deteriorate and other flood management plans are made the potential impacts on these communities must receive special focus so that they are not made to suffer unnecessarily due to neglect. Specific mitigation measures must be identified, including relocation if that is the most efficient means of mitigating negative impacts.

Mitigate the impacts on communities including economic impacts on the workforce.

Land retirement is a potential policy direction that this Plan will take. It is important that critical analysis be conducted to determine how the policies in this plan will impact job availability and community vitality. It is not sufficient to identify potential new jobs that may be created following land retirement. It is necessary to analyze whether and how the existing workforce would access those jobs and to provide the mitigation measures necessary to assure that communities will not be decimated.

Mitigate the impacts of increased costs for water on disadvantaged community members.

Primary amongst mitigation measures for increased water rates is a statewide lifeline water rate. This might be accomplished through the process of establishment of a statewide public goods charge. The following, mentioned above, should be mitigation components of a statewide public goods charge.

- Creation of a statewide lifeline water rate that would make water affordable for all environmental justice community members;
- Exempting environmental justice community members that are eligible for the lifeline water rate from paying the public goods charge; And,
- Assuring that some proportion of the funds collected go toward assuring water supply reliability for those communities currently without safe, affordable water for their basic human needs like drinking, bathing, and cooking.

Mitigate the impacts on Tribes of interrupted access to their cultural and subsistence resources.

Tribes have been neglected in this process thus far. The Delta legislation failed to include Tribes. However, the lack of mention does not dispense the State's responsibility to plan in compliance with existing state and federal law. The NOP indicates that relevant tribes will be identified by NAHC. Relevance to tribes is not merely indicated by location near the project center but through cultural connection based on tribal practice and historic use. This process should have occurred prior to the preparation of the NOP so that all Tribes potentially impacted by this process were notified and given the opportunity to comment. In addition, Tribes should be consulted directly when considering potential mitigation options.

We would also like to offer the following recommendations which are beyond the scope of the EIR, but are pertinent to your simultaneous creation of the Delta Plan:

Define “water supply reliability for California” in its broadest terms to include provision of safe, affordable water for basic human needs.

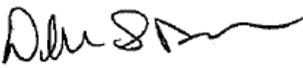
The bill package language is broad when referring to water supply reliability. Unfortunately, the application has consistently been focused on water supply reliability for water contractors. We urge you to use your discretion to interpret your charge to include assuring that basic water needs are met for communities in the Delta watershed.

Identify opportunities to produce benefits to Tribes, environmental justice and disadvantaged communities.

California will have to make a major financial investment to successfully implement a plan that resolves California's water challenges. It is possible that the same objectives may be met through projects and investments that also benefit Tribes, environmental justice and disadvantaged communities. Special emphasis should be placed on identifying these opportunities and ensuring that the necessary analysis is completed to make these elements of the Plan viable.

Again, thank you for this opportunity to comment and we look forward to working with you to produce a just and equitable Delta Plan.

Sincerely,

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 Jim Metropulos Senior Advocate Sierra Club California	 Conner Everts Executive Director Southern California Watershed Alliance Co- Chair of Desal Response Group
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