



**FINAL**

# **Delta Plan**

**Program Environmental Impact Report  
Volume 4, Binder 1 of 3: Introduction through  
Section 3, Responses to Comments on the Draft  
Program PEIR, State Agencies**

May 2013

STATE CLEARING HOUSE# 2010122028



**DELTA STEWARDSHIP COUNCIL**





**FINAL  
DELTA PLAN  
PROGRAM ENVIRONMENTAL IMPACT REPORT  
MAY 2013**

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## Abbreviations and Acronyms

°F	degree Fahrenheit
µg/L	microgram per liter
2006 WQCP	SWRCB's Draft 2006 Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary
ACE	Altamont Commuter Express
ACWD	Alameda County Water District
AGWA	Association of Groundwater Agencies
ALS	advanced life support
ALUC	airport land use commission
ALUCP	airport land use compatibility plan
AP	Alquist-Priolo
APCD	air pollution control district
AQMD	air quality management district
AQMP	air quality management plan
ARB	California Air Resources Board
AST	aboveground storage tank
AT&T	American Telephone & Telegraph
AVWB	Antelope Valley Water Bank
B.P.	Before Present
BAAQMD	Bay Area Air Quality Management District
BACT	Best Available Control Technology
BAM	Best Available Map
BART	Bay Area Rapid Transit
BAWAC	Bay Area Water Agencies Coalition
Bay Area	San Francisco Bay Area
BCDC	Bay Conservation and Development Commission
BDCP	Bay Delta Conservation Plan
BLM	U.S. Bureau of Land Management
BMP	best management practice
BNSF	Burlington Northern Santa Fe Railway

C4	CEQA Climate Change Committee
CAAQS	California Ambient Air Quality Standard
CAIP	Center for Aquatic and Invasive Plants
CAISMP	California Aquatic Invasive Species Management Plan
Cal EMA	California Emergency Management Agency
CAL FIRE	California Department of Forestry and Fire Protection
Cal. Code Regs.	California Code of Regulations
Cal/EPA	California Environmental Protection Agency
Cal/OSHA	California Occupational Safety and Health Administration
CalARP	California Accidental Release Prevention Program
CALFED	CALFED Bay-Delta Program
Cal-IPC	California Invasive Plant Council
Caltrans	California Department of Transportation
CAPCOA	California Air Pollution Control Officers Association
CAT	California Climate Action Team
CBSC	California Building Standards Commission
CCMVCD	Contra Costa Mosquito and Vector Control District
CCR	California Code of Regulations
CCTA	Contra Costa Transportation Authority
CCTC	Central California Traction Company
CCWD	Contra Costa Water District
CDBW	California Department of Boating and Waterways
CDEC	California Data Exchange Center
CDFA	California Department of Food and Agriculture
CDFG	California Department of Fish and Game
CDP	Census Designated Place
CDPH	California Department of Public Health
CEC	California Energy Commission
CEM	Civil Emergency Management
CEQ	Council on Environmental Quality
CEQA	California Environmental Quality Act

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
CESA	California Endangered Species Act
CFR	Code of Federal Regulations
cfs	cubic feet per second
CGS	California Geological Survey
CH <sub>4</sub>	methane
CHRIS	California Historical Resources Information System
CIMIS	California Irrigation Management Information System
cm	centimeters
CMP	congestion management program
CMWD	Calleguas Municipal Water District
CNAGPRA	California Native American Graves Protection and Repatriation Act
CNAHC	California Native American Heritage Commission
CNDDB	California Natural Diversity Database
CNEL	community noise equivalent level
CNPS	California Native Plant Society
CO <sub>2</sub>	carbon dioxide
CO <sub>2</sub> e	carbon dioxide equivalents
CO-CAT	Coastal and Ocean Working Group of the California Climate Action Team
CONOPS	catastrophic concept of operations
Cortese List	DTSC Hazardous Waste and Substances Sites List
Council	Delta Stewardship Council
CPSE	Center for Public Safety Excellence
CRA	Colorado River Aqueduct
CRHP	California Register of Historic Places
CRHR	California Register of Historical Resources
CRPR	California Rare Plant Rank
CRSB	Coast Ranges-Sierran Block
CSD	community services district
CSPA	California Sportfishing Protection Alliance
CUPA	Certified Unified Program Agencies

CV-SALTS	Central Valley Salinity Alternatives for Long-term Sustainability
CVFPB	Central Valley Flood Protection Board
CVJV	Central Valley Joint Venture
CVP	Central Valley Project
CVPIA	Central Valley Project Improvement Act
CVWD	Coachella Valley Water District
CWA	Clean Water Act
CZMA	Coastal Zone Management Act of 1972
D-1641	State Water Resources Control Board Decision 1641
dB	decibel
DBPC	dibromochloropropane
DBW	Department of Boating and Waterways
Delta	Delta and Suisun Marsh
Delta IFEOP	Delta-specific Integrated Flood Emergency Operations Plan
DFG	California Department of Fish and Game (now California Department of Fish and Wildlife [DFW] as of January 1, 2013)
DFW	California Department of Fish and Wildlife (formerly California Department of Fish and Game [DFG] before January 1, 2013)
DHS	Department of Homeland Security
DMU	diesel-multiple unit
DO	dissolved oxygen
DOC	California Department of Conservation
DOF	Department of Finance
DOGGR	Division of Oil, Gas, and Geothermal Resources
DOHS	Department of Occupational Health and Safety
DPC	Delta Protection Commission
DPM	diesel particulate matter
DPR	California Department of Parks and Recreation
DPS	Distinct Population Segments
Draft Flow SED	Draft Substitute Environmental Document in Support of Potential Changes to the Water Quality Control Plan for the Bay-Delta: San Joaquin River Flows and Southern Delta Water Quality (SWRCB 2012)
Draft PEIR	Draft Program Environmental Impact Report

DRERIP	Delta Regional Ecosystem Restoration Implementation Plan
DRMS	Delta Risk Management Strategy
DTSC	California Department of Toxic Substances Control
DWR	California Department of Water Resources
eBART	BART Extension
EBMUD	East Bay Municipal Utility District
EC	electrical conductivity
EDC	endocrine-disrupting chemicals
EDID	El Dorado Irrigation District
EIR	Environmental Impact Report
EIS	Environmental Impact Statement
EMD	Environmental Management Department
Emergency Plan	State of California Emergency Plan
EOC	Emergency Operations Center
ERP	Ecosystem Restoration Program
ESA	Endangered Species Act
ESJPWA	East San Joaquin Parties Water Authority
ESU	Evolutionarily Significant Unit
Exchange Contractors	San Joaquin River Exchange Contractors
FAST	Fairfield and Suisun Transit
Fed. Reg.	Federal Register
FEMA	Federal Emergency Management Agency
FERC	Federal Energy Regulatory Commission
FHWA	Federal Highway Administration
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FIRM	Flood Insurance Rate Map
FMMP	Farmland Mapping and Monitoring Program
FOC	Flood Operation Center
FPPA	Farmland Protection Policy Act
FRAP	Fire and Resource Assessment Program
FRSA	Feather River Service Area

FSZ	Farmland Security Zone
g/L	gram per liter
GAMA	Groundwater Ambient Monitoring and Assessment
GBA	Groundwater Banking Authority
GHG	greenhouse gas
GIS	geographic information system
gpm	gallon per minute
GWMP	Groundwater Management Plan
GWRS	Groundwater Replenishment System
HAB	harmful algae bloom
HABS	Historic American Building Survey
HAER	Historic American Engineering Record
HCM	Highway Capacity Manual
HCP	Habitat Conservation Plan
Health & Saf. Code	California Health and Safety Code
HFC	hydrofluorocarbons
HMMP	Hazardous Materials Management Plan
HMP	Hazard Mitigation Plan
HTP	Heritage Tree Preservation
HUD	U.S. Department of Housing and Urban Development
Hz	hertz
I-5	Interstate 5
I-80	Interstate 80
I-205	Interstate 205
IBC	International Building Code
ID	irrigation district
IID	Imperial Irrigation District
IPCC	Intergovernmental Panel on Climate Change
IRWD	Irvine Ranch Water District
IRWMP	Integrated Regional Water Management Plan
IS/ND	Initial Study/Negative Declaration

IS/NMD	Initial Study/Proposed Mitigated Negative Declaration
ITP	incidental take permit
JPA	Joint Powers Authority
Ka	thousand years
KCWA	Kern County Water Agency
kg	kilogram
KPRA	kingpin-to-rear-axle
KRCD	Kings River Conservation District
KWBA	Kern Water Bank Authority
LACDPW	Los Angeles County Department of Public Works
LADWP	Los Angeles Department of Power and Water
LAFCO	local agency formation commission
$L_{dn}$	day-night average noise level
LED	light emitting diodes
LEP	linear extensibility percent
$L_{eq}$	equivalent sound level
LESA	Land Evaluation and Site Assessment
LIM	Land Inventory and Monitoring
LMP	Land Management Plan
LSIWA	Lower Sherman Island Wildlife Area
LUST	leaking underground storage tank
M	moment magnitude
MACS	Multi Agency Coordination System
MAF	million acre-feet
MBTA	Migratory Bird Treaty Act
MCAB	Mountain Counties Air Basin
MCL	maximum contaminant level
MDAB	Mojave Desert Air Basin
Measure D	Save Agriculture and Open Space Lands Initiative
Metropolitan	Metropolitan Water District of Southern California
mg/kg	milligram per kilogram

mg/L	milligram per liter
mgd	million gallons per day
mL	milliliter
M <sub>L</sub>	Richter Magnitude
MLD	Most Likely Descendent
MMI	Modified Mercalli Intensity
MMT	million gross metric tons
MOU	memorandum of understanding
MRZ	Mineral Resources Zone
msl	mean sea level
MST	Milliken, Sarco, and Tulucay
MTBE	methyl tertiary butyl ether
MTC	Metropolitan Transportation Commission
MWA	Mojave Water Agency
mya	million years ago
N <sub>2</sub> O	nitrous oxide
NAAQS	National Ambient Air Quality Standards
NAGPRA	Native American Graves Protection and Repatriation Act
NAHC	Native American Heritage Commission
NAWMP	North American Waterfowl Management Plan
NCCAB	North Central Coast Air Basin
NCCP	Natural Community Conservation Plan
NCCP Act	Natural Community Conservation Planning Act
NDWA	North Delta Water Agency
NEPA	National Environmental Policy Act
NGA	Next Generation Attenuation
NHPA	National Historic Preservation Act
NIMS	National Incident Management System
NMFS	National Marine Fisheries Service
NOP	notice of preparation
NO <sub>x</sub>	nitrogen oxide

NPAB	Northeast Plateau Air Basin
NPDES	National Pollutant Discharge Elimination System
NPPA	Native Plant Protection Act of 1977
NPS	National Park Service
NRCS	Natural Resources Conservation Service
NRF	National Response Framework
NRHP	National Register of Historic Places
NSJCGBA	Northeastern San Joaquin County Groundwater Banking Authority
NSPS	New Source Performance Standards
NWR	National Wildlife Refuge
OCAP	Operational Criteria and Plan
OEHHA	Office of Environmental Health Hazard Assessment
OES	Office of Emergency Services
OPR	California Governor's Office of Planning and Research
PAH	polycyclic aromatic hydrocarbons
PAL	Provisionally Accredited Levee
PCB	polychlorinated biphenyls
PCE	perchloroethylene
PCFFA	Pacific Coast Federation of Fishermen's Associations
PEIR	Program Environmental Impact Report
PEIS	Programmatic Environmental Impact Study
PFC	perfluorocarbon
PFMC	Pacific Fisheries Management Council
PG&E	Pacific Gas and Electric Company
PGA	peak ground acceleration
PL	Public Law
Plan	East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan
PM	particulate matter
PM <sub>2.5</sub>	particulate matter less than 2.5 micrometers in aerodynamic diameter
PM <sub>10</sub>	particulate matter less than 10 micrometers in aerodynamic diameter
Porter-Cologne Act	Porter-Cologne Water Quality Control Act

PPIC	Public Policy Institute of California
ppm	parts per million
ppt	parts per thousand
PPV	peak particle velocity
PRMRP	Palentological Resources Monitoring and Recovery Plan
PSAP	Public Safety Answering Point
PSHA	Probabilistic Seismic Hazard Analysis
Pub. Resources Code	California Public Resources Code
PWC	personal watercraft
Qhb	basin deposits
Qhc	natural stream channels
Qhdm	mud of tidal wetlands
Qhl	levee deposits
QSA	Quantification Settlement Agreement
RBDD	Red Bluff Diversion Dam
RCD	Resource Conservation District
RCRA	Resource Conservation and Recovery Act of 1976
RD	reclamation district
Recirculated Draft PEIR	Recirculated Draft Program Environmental Impact Report
Reclamation	U.S. Bureau of Reclamation
RHJV	Riparian Habitat Joint Venture
RIP	Rehabilitation and Inspection Program
ROG	reactive organic gas
RPA	Reasonable and Prudent Alternative
RPS	Renewable Portfolio Standard
RT	Sacramento Regional Transit District
RWQCB	Regional Water Quality Control Board
SAA	Streambed Alteration Agreement
SACOG	Sacramento Area Council of Governments
San Joaquin RTD	San Joaquin Regional Transit District
SARA	Superfund Amendments and Reauthorization Act of 1986

SBC	Southwestern Bell Corporation
SCAB	South Coast Air Basin
SCAQMD	South Coast Air Quality Management District
SCCAB	South Central Coast Air Basin
SCE	Southern California Edison
SCMAD	Solano County Mosquito Abatement District
SCS	U.S. Soil Conservation Service
SCVWD	Santa Clara Valley Water District
SDAB	San Diego Air Basin
SDCWA	San Diego County Water Authority
SDG&E	San Diego Gas & Electric Company
Semitropic WSD	Semitropic Water Storage District
SEMS	Standardized Emergency Management System
SF <sub>6</sub>	sulfur hexafluoride
SFBAAB	San Francisco Bay Area Air Basin
SFEI	San Francisco Estuary Institute
SFHA	Special Flood Hazard Areas
SFO	San Francisco International Airport
SFPUC	San Francisco Public Utilities Commission
SIP	State Implementation Plan
SJC LAFCO	San Joaquin County Local Agency Formation Commission
SJCMVCD	San Joaquin County Mosquito and Vector Control District
SJCOG	San Joaquin Council of Governments
SJMSCP	San Joaquin County Multi-Species Habitat Conservation and Open Space Plan
SJRRP	San Joaquin River Restoration Program
SJVAB	San Joaquin Valley Air Basin
SJVAPCD	San Joaquin Valley Air Pollution Control District
SLE	St. Louis encephalitis
SMAQMD	Sacramento Metropolitan Air Quality Management District
SMCL	secondary maximum contaminant level
SMUD	Sacramento Municipal Utilities District

SNR	Sierra Northern Railway
SOI	sphere of influence
SOV	single-occupancy vehicles
SPA	Special Planning Area
SPCC	Spill Prevention, Control, and Countermeasures program, under the Clean Water Act
SPFC	State Plan of Flood Control
SR	State Route
SR-4	State Route 4
SR-12	State Route 12
SR-160	State Route 160
SR2S	Safe Routes to Schools
SRA	State Recreation Area
SRCAF	Sacramento River Conservation Area Forum
SSAB	Salton Sea Air Basin
STAA	Surface Transportation Assistance Act
Stafford Act	Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988
State Parks	California Department of Parks and Recreation
SVAB	Sacramento Valley Air Basin
SVP	Society of Vertebrate Paleontology
SWP	State Water Project
SWPPP	Stormwater Pollution Prevention Plan
SWRCB	State Water Resources Control Board
SYMVCD	Sacramento-Yolo Mosquito and Vector Control District
TAC	toxic air contaminant
TAF	thousand acre-feet
Task Force	Sacramento–San Joaquin Delta Multi-Hazard Coordination Task Force
TCE	trichloroethylene
TCP	Traditional Cultural Properties
TCSA	Toxic Substances Control Act of 1976
TDS	total dissolved solids
TMDL	total maximum daily load

TNC	The Nature Conservancy
TOC	total organic carbon
TPZ	timber production zones
TRD	Trinity River Division of the CVP
Trinity ROD	U.S. Department of the Interior's December 19, 2000, Trinity River Mainstem Record of Decision
UBC	Uniform Building Code
UCMP	UC Berkeley Museum of Paleontology
ULL	Urban Limit Line
UPRR	Union Pacific Railroad
USACE	U.S. Army Corps of Engineers
USC	United States Code
USDA	U.S. Department of Agriculture
USEPA	U.S. Environmental Protection Agency
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey
USPHS	U.S. Public Health Service
UST	underground storage tank
UWMP	Urban Water Management Plan
VAMP	Vernalis Adaptive Management Program
VOC	Volatile Organic Carbon
WA	State Wildlife Area
Wat. Code	California Water Code
WDNR	Wisconsin Department of Natural Resources
WEE	western equine encephalomyelitis
WEG	wind erodibility groups
WGCEP	Working Group on California Earthquake Probabilities
WICC	Watershed Information Center and Conservancy of Napa County
WMWD	Western Municipal Water District
WNV	West Nile virus
WQCP	Water Quality Control Plan

WRCC	Western Regional Climate Center
WRD	Water Replenishment District of Southern California
WRDA	Water Resources Development Act of 2007
WWR	Wetland and Water Resources, Inc.
YCTD	Yolo County Transportation District
YCWA	Yuba County Water Agency
YSAQMD	Yolo Solano Air Quality Management District

# Section 1

## Introduction

### 1.1 Purpose and Intended Use of this Document

The Delta Stewardship Council (Council) is proposing to adopt the Delta Plan, which is a plan for creating a more reliable water supply for California and protecting, restoring, and enhancing the Sacramento–San Joaquin Delta (Delta) ecosystem, all in a manner that protects and enhances the unique cultural, recreational, natural resources, and agricultural values of the Delta as an evolving place. The proposed project includes the Delta Plan and regulations implementing the policies of the Delta Plan.

This Final Program Environmental Impact Report (Final PEIR) for the Delta Plan has been prepared on behalf of the Delta Stewardship Council to respond to comments on the Draft Delta Plan PEIR (Draft PEIR) dated November 2011 and the Recirculated Draft Delta Plan PEIR (Recirculated Draft PEIR) dated November 2012, and to describe text changes made in response to comments and initiated by staff.

The PEIR for the Delta Plan consists of five volumes, the Draft PEIR (Volumes 1 and 2), the Recirculated Draft PEIR (Volume 3), and this document, the Final PEIR (Volumes 4 and 5), and has been prepared in compliance with the requirements of the California Environmental Quality Act (CEQA). This PEIR is intended to be used by the Council when it considers adoption of the Delta Plan and the regulations implementing the Delta Plan policies.

The purpose of this PEIR is to evaluate the potential significant environmental impacts of the implementation of the Delta Plan and implementing regulations. The fundamental purpose of the Delta Plan is to further achievement of the coequal goals, as defined in Water Code section 85054, and the inherent subgoals and policy objectives defined by statute, as identified in Section 2.1.9 of the Recirculated Draft PEIR. The Delta Plan defines an integrated and legally enforceable set of policies, strategies, and actions that will serve as a basis for future findings of consistency by state and local agencies with regard to specified “covered actions,” as defined in Water Code section 85057.5, and for subsequent evaluation of those findings by the Council on appeal, as provided in statute and Council regulation.

## 1.2 Relationship between the Draft PEIR Proposed Project and the Recirculated Draft PEIR Revised Project

This Final PEIR responds to comments on both the Draft PEIR (Volumes 1 and 2), which was issued for public comment on November 4, 2011, and the Recirculated Draft PEIR (Volume 3), which was issued for public comment on November 30, 2012. Some comments on the Draft PEIR refer to Draft PEIR text that was superseded in the Recirculated Draft PEIR. For those comments, the responses to the Draft PEIR comments rely on the Revised Project description and the analysis of the Revised Project description. Other comments on the Draft PEIR refer to Draft PEIR text that has not changed, and the responses to those comments rely on and refer to the Draft PEIR. Thus, for example, responses to comments on the environmental and regulatory setting will refer to the Draft PEIR, not the Recirculated Draft PEIR, because the setting is unchanged from the Draft PEIR to the Recirculated Draft PEIR.

## 1.3 Requirements for PEIR Certification and Future Steps in Project Approval

On December 10, 2010, the Council filed a notice of preparation (NOP) for this PEIR with the State Clearinghouse and distributed copies of the NOP to approximately 400 recipients. Seven CEQA public scoping meetings were held in January 2010 at locations throughout the planning area to brief interested parties on the Delta Plan and obtain the views of agency representatives and the public on the scope and content of this PEIR.

The Draft PEIR and Recirculated Draft PEIR were distributed for public and agency review and comment, in accordance with CEQA requirements. The review period for the Draft PEIR began on November 4, 2011, and closed on February 2, 2012. Seven public hearings were held during the review period. The Recirculated Draft PEIR was made available for public review from November 30, 2012 to January 14, 2013, with an additional public hearing held during the Recirculated Draft PEIR review period. In addition, written comments from the public, reviewing agencies, and stakeholders were accepted throughout the public comment period. These comments, along with the written responses to those comments, are contained in Section 3, “Responses to Comments on the Draft PEIR,” and Section 4, “Responses to Comments on the Recirculated Draft PEIR” of this Final PEIR. Corrections, revisions, additions, and/or deletions to the text of the Draft PEIR and Recirculated Draft PEIR are provided in Section 5, where deleted text is shown in strikeout and added text is shown in underline.

## 1.4 Organization and Format of this Document

The content and format of this PEIR are designed to meet the requirements of CEQA and the State CEQA Guidelines. The PEIR is organized as follows:

- ◆ Section 1, Introduction, states the purpose and use of this PEIR, explains the relationship between the Draft PEIR and the Recirculated Draft PEIR, provides an overview of the environmental review process, and presents a summary of the proposed project.
- ◆ Section 2, Minor Modifications to the Proposed Project, identifies minor modifications made to the proposed project, which consist of revisions to the regulatory policies and some of the recommendations of the Delta Plan.

- ◆ Section 3, Responses to Comments on the Draft PEIR, includes a list of commenters on the Draft PEIR, all comment letters received during the public review period for the Draft PEIR, transcripts of public hearings, and responses to comments.
- ◆ Section 4, Responses to Comments on the Recirculated Draft PEIR, includes a list of commenters on the Recirculated Draft PEIR, all comment letters received during the public review period for the Recirculated Draft PEIR, transcripts of public hearings, and responses to comments.
- ◆ Section 5, Revisions to the Draft PEIR and Recirculated Draft PEIR, contains text changes to the respective documents made in response to comments or to amplify, clarify, or make modifications or corrections. Changes in the text are indicated by ~~strikeout~~ where text is removed and by underline where text is added.
- ◆ Section 6, References, provides the list of references unique to the preparation of this Final PEIR (Volumes 4 and 5). It does not repeat references previously provided in Volumes 1, 2, and 3, although those references have been cited where necessary to reiterate information sources in response to comments.



# Section 2

## Minor Modifications to the Proposed Project

This section identifies minor modifications to and clarifications of the Revised Project (the November 2012 Final Draft Delta Plan), which was analyzed in the Delta Plan Recirculated Draft PEIR that was issued for public review and comment in November 2012. Since the publication of the Final Draft Delta Plan and the Recirculated Draft PEIR, Delta Stewardship Council staff has made several changes to the policies and recommendations of the proposed Delta Plan to provide further clarification and to address public comments on the Revised Project. At its meeting of March 28–29, 2013, the Delta Stewardship Council directed staff to make the changes discussed below. The May 2013 Proposed Final Delta Plan will include these revised policies and recommendations.

As discussed in detail below, none of these revisions constitute “significant new information” that the Project, as modified, would result in a new significant impact or substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR. Therefore, CEQA does not require the Council to recirculate the PEIR for public review. See CEQA Guidelines § 15088.5(a).

The full text of the revisions to the policies and recommendations is provided in the Delta Plan Policies and Recommendations (Appendix A) excerpted from the Delta Plan in ~~strikeout~~ and underline format. Many of the changes in the policies shown in Appendix A were fully underlined in order to aid the Delta Stewardship Council in its review of the revisions to the Delta Plan (i.e., reviewing non-interlineated text is easier) even when the actual change to the policy was limited to only a portion or word of a given paragraph. In other words, Appendix A shows more apparent text changes than are actually proposed. The precise wording changes to the policies are shown in Appendix B (proposed CCR Title 23, Division 6, Chapter 2, which shows all of the additions to and deletions from the regulations/policies, in interlineated format, that will be adopted to implement the Delta Plan).

### 2.1 Revised Policies and Anticipated Environmental Impacts in Comparison to the Revised Project Analyzed in the Recirculated Draft PEIR

The following summarizes revisions to the Delta Plan policies in comparison to the description of the Revised Project, and the analysis of the anticipated impacts of the revised project in the Recirculated Draft PEIR. All of the Delta Plan policies will become regulations following completion of the rulemaking process; therefore, the regulation number assigned to each Delta Plan policy is shown below

next to the policy number. The proposed regulations also include a definitions section as well as sections that provide cross references to other regulatory sections and certain Water Code sections in the Delta Reform Act, which do not appear in the text of the Delta Plan policies.

***Policy G P1 (Corresponds to Regulation §5002). Detailed Findings to Establish Consistency with the Delta Plan.***

Changes to this policy include the following:

- ◆ Clarifies that covered actions need to be consistent with the Delta Plan.
- ◆ Clarifies how conservation measures pursuant to existing local natural community conservation plans or habitat conservation plans can be found consistent with the Delta Plan.
- ◆ Removes the requirement that the certification of consistency include a certification that the covered action complies with specified categories of applicable laws.

***Anticipated impacts in comparison to Revised Project analyzed in the Recirculated Draft PEIR:*** The revisions to this policy were primarily made to better conform to the Delta Reform Act or other provisions of California law, and/or existing authorities and jurisdictions of various State agencies. These changes concern the standards and procedures that will be used to determine whether a covered action is consistent with the Delta Plan, and would not change the number or types of projects that the Delta Plan would encourage. Therefore, none of the changes would result in a new significant impact or a substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR.

***Policy WR P1 (Corresponds to Regulation §5003). Reduce Reliance on the Delta through Improved Regional Water Self-Reliance.***

Changes to this policy include the following:

- ◆ Removes introductory statements and moves them to the Delta Plan narrative.
- ◆ Clarifies that policy WR P1 applies only when one or more water suppliers would receive water as a result of a proposed action to export water from, transfer water through, or use water in the Delta.
- ◆ Adds quantification of previously included performance measures for demonstrating reduction in reliance on the Delta and improvement in regional self-reliance, and specifies a mechanism for reporting this information to the State.
- ◆ Clarifies that regional water storage is included in the list of programs and projects that could reduce reliance on the Delta.

***Anticipated impacts in comparison to Revised Project analyzed in the Recirculated Draft PEIR:*** The removal of the descriptive, introductory language has no effect on the scope of the policy or its physical effect on the environment. Clarifying performance measures and the contents of water management plans changes the planning and reporting that agencies must undertake pursuant to this policy, but would not affect the projects it encourages, and thus will not change the policy's physical environmental effects. Clarifying that projects which reduce reliance on the Delta also include regional water storage does not alter the environmental analysis in the Recirculated Draft PEIR, which discussed water storage projects within the category of Reliable Water Supply projects analyzed in each resource area. Therefore, none of these changes would result in a new significant impact or a substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR.

### ***Policy WR P2 (Corresponds to Regulation 5004) Transparency in Water Contracting***

Changes to this policy include the following:

- ◆ Provides the citations to the Central Valley Project Improvement Act and the rules and regulations implementing the Act.

Anticipated impacts in comparison to Revised Project analyzed in the Recirculated Draft PEIR: The addition of the law title and reference to the associated rules and regulations has no effect on the scope of the policy or its physical effect on the environment. Therefore, none of these changes would result in a new significant impact or a substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR.

### ***Policy ER P1 (Corresponds to Regulation §5005). Delta Flow Objectives.***

Changes to this policy included the following:

- ◆ Reclassifies as a recommendation rather than a policy, for purposes of improved accuracy, the recommendation to the State Water Resources Control Board to update flow objectives. (See discussion of new Recommendation ER R1, below.)
- ◆ Clarifies that policy ER P1 only applies to proposed actions that could “significantly” affect flow in the Delta.

***Anticipated impacts in comparison to Revised Project analyzed in the Recirculated Draft PEIR:*** This change does not alter the content of the Delta Plan. Instead, it properly reclassifies the Delta Stewardship Council’s recommendation to the SWRCB as a Delta Plan recommendation rather than a regulatory policy. As discussed in Master Response 2, the PEIR assumes that both policies and recommendations will be successfully implemented for purposes of evaluating the reasonably foreseeable, direct and indirect significant environmental effects of the Delta Plan. Therefore, this change does not alter the analysis in the PEIR and would not result in a new significant impact or a substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR.

### ***Policy ER P2 (Corresponds to Regulation §5006). Restore Habitats at Appropriate Elevations.***

Changes to this policy include the following:

Provides for deviations from the policy (related to Section II of the ERP Conservation Strategy or elevation maps) if a rationale based on best available science is provided.

***Anticipated impacts in comparison to Revised Project analyzed in the Recirculated Draft PEIR:*** Revisions to this policy were made to account for the California Department of Fish and Wildlife comment that the potential to deviate from portions of the regulations be allowed if supported by sufficient scientific rationale. This change does not alter the analysis in the PEIR and would not result in a new significant impact or a substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR, because the elevation map shown in Appendix 4 is only a guide (and proxy for best available science) for determining appropriate habitat restoration actions.

### ***Policy ER P3 (Corresponds to Regulation §5007). Protect Opportunities to Restore Habitat.***

Changes to this policy include the following:

- ◆ Clarifies that within the specified priority habitat restoration areas, significant “adverse” impacts to the opportunity to restore habitat must be avoided or mitigated, to a point where the impacts have no significant effect on the opportunity to restore habitat.
- ◆ Further clarifies that impacts will be deemed to be avoided or mitigated if the project is designed and implemented so as not to preclude or otherwise interfere with the ability to restore habitat.
- ◆ Related definitions are provided in the Definitions (Regulation §5001).

***Anticipated impacts in comparison to Revised Project analyzed in the Recirculated Draft PEIR:***

Revisions to this policy were made to provide more specificity as to how a project can avoid or mitigate potential reduction in the ability to restore habitat areas and to tie the avoidance and mitigation to policy ER P2 for clarity. The changes are for clarity, and are non-substantive in that they do not result in any change to physical activity. Accordingly, these changes do not alter the analysis in the PEIR and would not result in a new significant impact or a substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR.

***Policy ER P4 (Regulation §5008). Expand Floodplains and Riparian Habitats in Levee Projects.***

Changes to this policy include the following:

- ◆ Reduces the requirement to evaluate and incorporate, where feasible, the use of setback levees to specified areas only.

***Anticipated impacts in comparison to Revised Project analyzed in the Recirculated Draft PEIR:***

Revisions to this policy would reduce the scope of its requirements from Delta-wide to only the specific areas listed in the policy. The revisions would reduce the extent of the requirement to evaluate setback levees, and may reduce the setting back of levees and the potential conflict, in some locations, with existing land uses.

These changes do not alter the analysis in the PEIR and would not result in a new significant impact or a substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR. Significant ecosystem restoration benefits would be preserved by emphasizing opportunities to set back levees along rivers and channels, with the most potential to benefit anadromous fish, while relying on other measures to increase riparian habitats in other parts of the Delta.

***Policy ER P5 (Regulation §5009). Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species.***

Changes to this policy include the following:

- ◆ Added the word “invasive” in the title of the regulation to provide additional clarification with respect to nonnative species.
- ◆ Expressly lists “striped bass and bass” to clarify that these species are covered by the policy.

***Anticipated impacts in comparison to Revised Project analyzed in the Recirculated Draft PEIR:***

A related definition of “non-native invasive species” was added to the regulatory Definitions (see Section 5001 of the proposed regulations in Appendix B) to provide additional clarification. Although striped bass and bass are not included in the DFW definition of nonnative invasive species, these two species are included as invasive nonnative species analyzed in Section 4.3.2.1.3 of the Draft PEIR and are covered under the Delta Plan policy. In other words, the policy language clarification was already covered in the Recirculated Draft PEIR’s analysis. These changes are minor in nature and do not alter the analysis in the

PEIR and would not result in a new significant impact or a substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR.

***Policy DP P1 (Regulation §5010). Locate New Urban Development Wisely.***

Changes to this policy include the following:

- ◆ Clarifies that proposed development outside of the areas specified in the policy is permitted if it is consistent with the county general plan as of the date of Delta Plan adoption.
- ◆ Clarifies that the restrictions on the location of new urban development apply to residential, commercial, and industrial uses.

***Anticipated impacts in comparison to Revised Project analyzed in the Recirculated Draft PEIR:*** The revisions clarify what constitutes new urban development subject to the restrictions in policy DP P1, and that these uses may be permitted if they are consistent with the county's current general plan. The additional clarification re-emphasizes that new urban development is limited to areas designated in county or city general plans for such uses, which is how the Recirculated Draft PEIR evaluated this policy. These changes are minor in nature as they simply provide further clarifying definition to the policy language and do not alter the analysis in the PEIR and would not result in a new significant impact or a substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR.

***Policy DP P2 (Regulation §5011). Respect Local Land Use when Siting Water or Flood Facilities or Restoring Habitats.***

Changes to this policy include the following:

- ◆ Further clarifies, for purposes of avoiding land use conflicts with water management, ecosystem restoration and flood management projects encouraged by the Delta Plan, that conflicts should be avoided with not only existing uses but also with planned land use described or depicted in city and county general plans.

***Anticipated impacts in comparison to Revised Project analyzed in the Recirculated Draft PEIR:*** Revisions to this policy were made to clarify that planned uses are defined as those uses described or depicted in city and county general plans for their jurisdictions or spheres of influence. These changes are minor in nature as they simply provide further clarifying definition to the policy language and do not alter the analysis in the PEIR (except possibly to reduce conflicts/impacts) and would not result in a new significant impact or a substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR.

***Policy RR P1 (Regulation §5012). Prioritization of State Investments in Delta Levees and Risk Reduction.***

Changes to this policy include the following:

- ◆ Portions of the policy (Subsections a, b, and c) were determined not to be regulatory in nature.
- ◆ These subsections, which primarily address proposed Delta Stewardship Council and Department of Water Resources actions to develop Delta levees funding priorities, were removed from the policy and restated as a new Recommendation RR R4 (see discussion of new Recommendation RR R4, below).
- ◆ Removed the statement that State Legislature funding allocations to the Delta Levees Subventions Program is not a covered action.

***Anticipated impacts in comparison to Revised Project analyzed in the Recirculated Draft PEIR:***

Revisions to this policy reclassify the actions or studies needed to support the development of revised funding priorities as a recommendation rather than a regulatory policy. These activities were analyzed in the Recirculated Draft PEIR. In addition, developing funding priorities for future State investments in Delta levees consistent with the Delta Reform Act, for future consideration by the Delta Stewardship Council, is a planning activity that will not lead to a physical effect on the environment without future Council action. Therefore, these changes do not alter the analysis in the PEIR, and would not result in a new significant impact or a substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR.

***Policy RR P2 (Regulation §5013). Require Flood Protection for Residential Development in Rural Areas.***

Changes to this policy include the following:

- ◆ Clarifies the specific level of flood proofing required for new residential development of five or more parcels so that it is at least 12 inches above the 100-year (compared to the prior requirement of 200-year protection) base flood elevation plus sufficient additional specified elevations to protect against a 55-inch sea level rise at the Golden Gate.

***Anticipated impacts in comparison to Revised Project analyzed in the Recirculated Draft PEIR:***

Revisions to this policy would revise and likely improve the level of flood protection for new residential development of five or more parcels in rural areas in comparison to existing conditions by changing from a requirement for 200-year protection (levees or floodproofing) to 100-year floodproofing plus additional freeboard elevation requirements to account for anticipated sea level rise within approximately the next 100 years. These changes are consistent with current legal requirements for floodproofing structures in rural areas, with an additional measure of risk reduction to account for sea level rise, as recommended by the Ocean Protection Council. Generally, flood proofing residential structures would result in comparatively lesser impacts than constructing new levees or raising existing levees to provide a higher level of flood protection. Flood proofing to a 100-year level of flood protection, even with freeboard, would be anticipated to involve less construction than providing 200-year level of flood protection through levee improvement. These changes would not alter the analysis in the PEIR and would not result in a new significant impact or a substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR.

***Policy RR P3 (Regulation §5014). Protect Floodways.***

Changes to this policy include the following:

- ◆ Changes the word “permitted” to “allowed or constructed” to state that: “No encroachment shall be allowed or constructed in a floodway, unless it can be demonstrated by appropriate analysis that the encroachment will not unduly impede the free flow of water in the floodway or jeopardize public safety.”
- ◆ Clarifies that this policy applies to all floodways, as stated previously in the Revised Project, and to acknowledge the Central Valley Flood Protection Board’s (CVFPB) authority over “designated floodways” and “regulated streams.” Related definitions are added to the Definitions (Section 5001) of the regulations.

***Anticipated impacts in comparison to Revised Project analyzed in the Recirculated Draft PEIR:***

Revisions to this policy focus on text clarifications and would not affect the analysis conducted in the Recirculated Draft PEIR given potential impacts to all floodways, including those under the permitting authority of the CVFPB, were evaluated. Therefore, this change would not result in a new significant

impact or a substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR.

### ***Policy RR P4 (Regulation §5015). Floodplain Protection.***

Changes to this policy include the following:

- ◆ Changes the word “permitted” to “allowed or constructed”, and adds the word “adverse” in the policy to now read: “No encroachment shall be allowed or constructed in any of the following floodplains unless it can be demonstrated by appropriate analysis that the encroachment will not have a significant adverse impact on floodplain values and functions.”
- ◆ Clarifies the geographical extent of the Yolo Bypass to be addressed by the policy to be limited to the portion only within the Delta.

Anticipated impacts in comparison to Revised Project analyzed in the Recirculated Draft PEIR: Revisions to this policy do not alter the analysis in the PEIR, and would not result in a new significant impact or a substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR because, while the revised policy protects a slightly smaller area of floodplain from encroachments, the policy (even as revised) is still an improvement of floodplain protection as compared to existing conditions.

## **2.2 Revised Recommendations and Anticipated Environmental Impacts in Comparison to the Revised Project Analyzed in the Recirculated Draft PEIR**

The following summarizes the substantive revisions to the Delta Plan recommendations in comparison to the description of the Revised Project and the analysis of the anticipated impacts of the Revised Project in the Recirculated Draft PEIR. Not all revised recommendations are evaluated below, because some were revised in such extremely minor ways (e.g., WQ R9, changing “Department of Fish and Game” to “Department of Fish and Wildlife”) such that the lack of any PEIR analytical issues (and therefore recirculation issues) is self-evident. The full text of the revisions to the recommendations is provided in Appendix B in ~~strikeout~~ and underline format.

### ***Recommendation WR R4. Expanded Water Supply Reliability Element.***

Changes to this recommendation include the following:

- ◆ Clarifies that plans for possible interruption of water supplies for up to 36 months due to catastrophic events impacting the Delta, which are required as part of any expanded water supply reliability element in urban or agricultural water supply plans, or integrated water management plans, should include all agencies with linkages to the Delta.

#### ***Anticipated impacts in comparison to Revised Project analyzed in the Recirculated Draft PEIR:***

Revisions to this recommendation clarify the timeframe and applicability of a water supply plan for those agencies with linkages to the Delta associated with potential catastrophic events impacting the Delta. Revision to this recommendation does alter any physical activity that might be associated with this recommendation and so does not alter the analysis in the PEIR and would not result in a new significant

impact or a substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR.

### ***Recommendation WR R15. Improve Water Transfer Procedures.***

The date by which DWR and SWRCB should recommend improvements in water transfer procedures is extended by two years to December 31, 2016. This date extension corresponds to the two-year extension of the expiration date of covered action exemption on temporary one-year water transfers from December 31, 2014 to December 31, 2016, as listed under §5001, Definitions of the Regulations.

#### ***Anticipated impacts in comparison to Revised Project analyzed in the Recirculated Draft PEIR:***

Revisions to this recommendation (extension of two years) would provide clarification to conform to the related change in covered action exemption on temporary one-year water transfers (i.e., extending the exemption by the same two years) in the Definitions section of the regulations. The two-year extension would facilitate DWR and SWRCB to work with stakeholders to improve water transfer procedures that would reduce procedural and administrative impediments while protecting water rights and environmental resources, as well as addressing issues associated with recurring one-year transfers. In the context of the timeframe of decades to implement the Delta Plan, this two-year extension will provide benefits to a critical element of water supply reliability improvements and balancing resources protection. Revision to this recommendation does not alter the analysis in the PEIR, which includes water transfers, and would not result in a new significant impact or a substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR.

### ***Recommendation ER R1. Update Delta Flow Objectives.***

This new recommendation consists of the policy language that was deleted from Revised Project policy ER P1, as discussed above. The same as the corresponding portions of former Policy ER P1, Recommendation ER R1:

- ◆ Recommends that the State Water Resources Control Board adopt and implement updated flow objectives for the Delta by June 2, 2014, and adopt and implement updated flow objectives for high-priority tributaries in the Delta watershed by June 2, 2018.
- ◆ Lists potential mechanisms for implementing flow objectives and agencies with which the SWRCB should work to determine stream priorities.

#### ***Anticipated impacts in comparison to Revised Project analyzed in the Recirculated Draft PEIR:***

Because this new recommendation was formerly part of Revised Project policy ER P1, this revision does not alter the analysis in the PEIR and would not result in a new significant impact or a substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR.

### ***Recommendation RR R4. Actions for the Prioritization of State Investments in Delta Levees.***

This new recommendation consists of language that was deleted from Revised Project policy RR P1, as discussed above:

- ◆ Recommends that the Delta Stewardship Council, in consultation with the other agencies listed in the recommendation, develop funding priorities for State investments in Delta levees by January 1, 2015. The priorities would be supported by listed actions to be conducted by the Department of Water Resources, consistent with available funding.

#### ***Anticipated impacts in comparison to Revised Project analyzed in the Recirculated Draft PEIR:***

Because this new recommendation was formerly part of Revised Project policy RR P1, this revision does

not alter the analysis in the PEIR and would not result in a new significant impact or a substantial increase in the severity of a significant impact that was not analyzed in the Recirculated Draft PEIR.



# Section 3

## Responses to Comments on the Draft PEIR

This section contains the comment letters received on the Draft PEIR, including transcribed comments received during the seven public hearings held in November and December 2011 and January 2012, and the Delta Stewardship Council’s responses to significant environmental issues raised in those comments. Each letter and transcript, as well as each individual comment within the letter or transcript, has been given a number for purposes of cross-referencing.

After review and evaluation of the comments, it was determined that some comments by different commenters were substantially similar in subject matter. In response to these frequently raised comments, “master responses” have been prepared to address such comments and to avoid repetition of responses and lengthy duplication of text. The master responses address the following general topics:

- ◆ Master Response 1: Project Description
- ◆ Master Response 2: Approach to Environmental Review of the Delta Plan
- ◆ Master Response 3: Alternatives
- ◆ Master Response 4: Mitigation
- ◆ Master Response 5: Water Supply and Delta Flow

The text of each master response is provided in this section following the list of commenters (Table 3-1). These master responses are cross-referenced in the individual responses to comments.

Table 3-1 lists all of the parties who submitted comments on the Draft PEIR during the public review period. The commenting parties are organized into six categories, each with an abbreviated letter prefix that assists the reader in identifying specific letters: federal agencies (FD), tribal governments (TR), State of California agencies (ST), local agencies (LO), organizations (OR), and individuals (I).

Table 3-1  
*List of Commenters on the Draft PEIR*

Letter #	Commenter
<b>Federal Agencies (FD)</b>	
FD3	U.S. Bureau of Reclamation
<b>Tribal Governments (TR)</b>	
TR3	Hoopa Valley Tribal Council
TR4	Yoch De Wintun Nation
<b>State of California Agencies (ST)</b>	
ST37	California Transportation Commission

Table 3-1  
*List of Commenters on the Draft PEIR*

<b>Letter #</b>	<b>Commenter</b>
ST38	CA Department of Water Resources
ST39	California Department of Conservation, Division of Oil, Gas, and Geothermal Resources
ST40	California State Parks, Planning Division
ST41	Sacramento-San Joaquin Delta Conservancy
ST42	Caltrans
ST43	Central Valley Flood Protection Board
ST44	San Francisco Bay Conservation and Development Commission
ST45	California State Assembly
ST46	Delta Protection Commission
ST47	Department of Water Resources
ST48	Sierra Nevada Conservancy
ST49	State Water Resources Control Board
ST50	California State Lands Commission
ST51	California Department of Fish and Game
<b>Local Agencies (LO)</b>	
LO165	Stanislaus County
LO166	Solano County Water Agency
LO167	Butte County Board of Supervisors
LO168	Calaveras County Board of Supervisors
LO169	Alameda County Flood Control and Water Conservation District - Zone 7
LO170	Glenn County Board of Supervisors
LO171	Napa County Board of Supervisors
LO172	Pasadena Water and Power
LO173	Regional Council of Rural Counties
LO174	Glenn-Colusa Irrigation District
LO175	Westlands Water District
LO176	San Juan Water District
LO177	Alameda County Water District
LO178	Calaveras County Water District
LO179	Del Puerto Water District
LO180	Ironhouse Sanitary District
LO181	Provident Irrigation District and Princeton-Codora-Glenn Irrigation District
LO182	LADWP
LO183	Reclamation District 830
LO184	Sacramento Suburban Water District
LO185	South Delta Water Agency
LO186	Tuolumne County Board of Supervisors
LO187	Tuolumne Utilities District
LO188	Contra Costa County Department of Conservation and Development

Table 3-1  
*List of Commenters on the Draft PEIR*

<b>Letter #</b>	<b>Commenter</b>
LO189	Regional Water Authority
LO190	SJCOG, Inc.
LO191	San Joaquin River Group Authority
LO193	Browns Valley Irrigation District
LO194	City of Lathrop
LO195	City of Stockton
LO196	Suisun Resource Conservation District
LO197	Yuba County Water Agency
LO198	City of Folsom
LO199	City of Sacramento
LO200	San Joaquin Area Flood Control Agency
LO201	Contra Costa Water District
LO202	City of Redding
LO203	City of Roseville
LO204	Clarksburg Fire Protection District
LO205	San Joaquin County Board of Supervisors
LO206	Eastern Municipal Water District
LO207	East Bay Municipal Utility District
LO208	El Dorado County Water Agency
LO209	Friant Water Authority
LO210	Mojave Water Agency
LO211	Metropolitan Water District of Southern California
LO212	North Delta Water Agency
LO213	Placer County Water Agency
LO214	Port of Stockton
LO215	Sacramento-Yolo Mosquito and Vector Control District
LO216	San Diego County Water Authority
LO217	SJCOG, Inc.
LO218	Solano County Department of Resource Management
LO219	Sacramento Regional County Sanitation District
LO220	Stockton East Water District
LO221	Tehama-Colusa Canal Authority
LO222	Yolo County Board of Supervisors
LO223	Yolo National Heritage Program
LO224	City of Antioch
LO225	Shasta County Water Agency
LO226	El Dorado Irrigation District
LO227	Central Delta Water Agency
LO228	Central Delta Water Agency

Table 3-1  
*List of Commenters on the Draft PEIR*

<b>Letter #</b>	<b>Commenter</b>
LO229	Local Agencies of the North Delta
LO230	Northern California Power Agency
LO231	Sacramento County
LO232	San Luis and Delta Mendota Water Authority
LO233	Castaic Lake Water Agency
LO234	Three Valleys Municipal Water District
LO240	City of San Diego Public Utilities Department
LO245	Bethel Island Municipal Improvement District
LO246	Tehama County BOS
<b>Organizations (OR)</b>	
OR85	River Islands
OR86	Northern California Water Association
OR87	Snug Harbor Resorts, LLC
OR88	Venoco, Inc.
OR89	Trinity Lake Revitalization Alliance
OR90	Association of California Water Agencies on behalf of the Ag-Urban Coalition
OR91	California State Association of Counties
OR92	Delta Vision Foundation
OR93	Delta Wetlands Project
OR94	Mountain Counties Water Resources Association
OR95	Rossmann and Moore, LLP
OR96	Earth Law Center
OR97	Environmental Water Caucus
OR98	Yolo Basin Foundation
OR99	California Farm Bureau Federation
OR100	PCFFA et al.
OR101	Coalition for a Sustainable Delta
OR102	CSPA et al.
OR103	Central Valley Clean Water Association
OR104	California Waterfowl Association
OR105	Delta Caucus
OR106	Downey Brand, LLP
OR107	Ducks Unlimited
OR108	Lewis, Brisbois, Bisgaard and Smith, LLP
OR109	Northern California Water Association
OR110	Pacific Coast Federation of Fishermen's Associations
OR111	Save the California Delta Alliance
OR112	Water Resources Association of Yolo County
OR113	California Water Research Associates

Table 3-1  
*List of Commenters on the Draft PEIR*

<b>Letter #</b>	<b>Commenter</b>
OR115	Natural Resources Defense Council
OR116	Pacific Gas and Electric
OR117	Restore the Delta
OR118	Friends of the River
OR119	California Municipal Utilities Association
OR121	Southern California Water Committee
<b>Individuals (I)</b>	
I91	Terry Spragg
I92	Brian Smith
I93	Gary Arant
I95	Clare M. Spensley
I96	William Brooks
I97	Andrew Glass
I98	Burt Wilson
I99	Richard Smith
I100	Robert Pyke
I101	Robert Pyke
I102	John Armanino
I103	Lowell Jarvis
I104	Diana Wood
I105	Robert Pope
I106	Mark Pruner
I107	Wally Baumgartner
I108	Hirshel Mattingly
I109	Public Hearing Transcript, Sacramento, California (November 17, 2011)
I110	Public Hearing Transcript, Sacramento, California (December 15, 2011)
I111	Public Hearing Transcript, San Diego, California (January 11, 2012)
I112	Public Hearing Transcript, Pasadena, California (January 12, 2012)
I113	Public Hearing Transcript, Ceres, California (January 17, 2012)
I114	Public Hearing Transcript, Clarksburg, California (January 18, 2012)
I115	Public Hearing Transcript, Willows, California (January 19, 2012)
I121	Alison Clement, on behalf of Friends of the River
I122	Bob McConachie, on behalf of Friends of the River
I123	Bruce Starr, on behalf of Friends of the River
I125	Carolyn De Mirjian, on behalf of Friends of the River
I126	Christian Heinold, on behalf of Friends of the River
I127	Chuck Hammerstad, on behalf of Friends of the River
I128	Cynthia Adams, on behalf of Friends of the River
I129	David Adams, on behalf of Friends of the River

Table 3-1  
*List of Commenters on the Draft PEIR*

<b>Letter #</b>	<b>Commenter</b>
I130	Donald Hoernschemeyer, on behalf of Friends of the River
I131	Elizabeth Anthony, on behalf of Friends of the River
I132	Elizabeth Rocke, on behalf of Friends of the River
I133	George Wight, on behalf of Friends of the River
I134	Gordon Becker, on behalf of Friends of the River
I135	Jack Van den Bogaerde, on behalf of Friends of the River
I136	Jeff Wieland, on behalf of Friends of the River
I137	John Huls, on behalf of Friends of the River
I138	John Kolarik, on behalf of Friends of the River
I139	Jon Musacchia, on behalf of Friends of the River
I140	Sebastian Joseph, on behalf of Friends of the River
I141	Judy Johnson, on behalf of Friends of the River
I142	Julie Ford, on behalf of Friends of the River
I143	Kathy Hanson, on behalf of Friends of the River
I144	Kirsten Holquist, on behalf of Friends of the River
I145	Kit Lofroos, on behalf of Friends of the River
I146	Larry Keller, on behalf of Friends of the River
I147	Lisa Reinertson, on behalf of Friends of the River
I148	Mark Reback, on behalf of Friends of the River
I149	Miranda Everett, on behalf of Friends of the River
I150	Pa Gianni, on behalf of Friends of the River
I151	Raymond Binner, on behalf of Friends of the River
I152	Rob Seltzer, on behalf of Friends of the River
I153	Robert Rosenberg, on behalf of Friends of the River
I154	Rosellen Trunnell, on behalf of Friends of the River
I155	Sandy Zelasko, on behalf of Friends of the River
I156	Sonja Malmuth, on behalf of Friends of the River
I157	Stephen Greenberg, on behalf of Friends of the River
I158	Stephen Weber, on behalf of Friends of the River
I159	Steve Schramm, on behalf of Friends of the River
I160	Tia Triplett, on behalf of Friends of the River
I161	Tim Thomas, on behalf of Friends of the River
I162	Tyana Maddock, on behalf of Friends of the River
I163	Cathy Sutton, on behalf of Friends of the River
I164	Dale Heckman, on behalf of Friends of the River
I166	Dan Silver, on behalf of Friends of the River
I167	Deborah Filipelli, on behalf of Friends of the River
I168	Dorrit Ahbel, on behalf of Friends of the River
I169	Harry Surtees, on behalf of Friends of the River

Table 3-1  
*List of Commenters on the Draft PEIR*

<b>Letter #</b>	<b>Commenter</b>
I170	James Tolonen, on behalf of Friends of the River
I171	Jeffrey Schuitema, on behalf of Friends of the River
I172	Juan Byron, on behalf of Friends of the River
I173	Mike Lee, on behalf of Friends of the River
I174	Molly Ferrell, on behalf of Friends of the River
I175	Paul Eilers, on behalf of Friends of the River
I176	Peter Wilson, on behalf of Friends of the River
I177	Rachael Denny, on behalf of Friends of the River
I178	Stephen Anderson, on behalf of Friends of the River
I179	Suzanne Ferroggiaro, on behalf of Friends of the River
I180	Tracey Sittig, on behalf of Friends of the River
I181	Francisco Costa, on behalf of Friends of the River
I182	Linnea Fronce and Thomas Hall, on behalf of Friends of the River
I183	Virginia Berton, on behalf of Friends of the River
I184	Jim and Diana Prola, on behalf of Friends of the River
I185	Donna Carr, on behalf of Friends of the River
I186	Benjamin Rualo

# Master Response 1: Project Description

## Introduction

This Master Response responds to comments pertaining to the description of the project that is analyzed in the PEIR. “Project,” as defined by CEQA, is “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” CEQA Guidelines § 15378(a). The subject of this PEIR is the Delta Plan, which is described in more detail below. The whole of the action for purposes of this PEIR is adoption of the Delta Plan; adoption of regulations implementing the Delta Plan’s policies; future actions by the Delta Stewardship Council (“Council”) related to appeals of state and local agency determinations that proposed covered actions are consistent with the Delta Plan; and implementing actions called for by the Delta Plan’s policies, recommendations and performance measures. This Master Response explains the Council’s authority to adopt the Delta Plan, the general contents of the Delta Plan, and how the covered action consistency determination process will work. This Master Response also responds to comments related to programs, projects and regulatory actions being proposed or undertaken by other agencies that are not part of the Delta Plan, and explains their current and future relationship to the Delta Plan. These other projects include, but are not limited to, the Bay Delta Conservation Plan and Delta flow criteria and flow objectives. This Master Response concludes by explaining how the project analyzed in this PEIR differs from existing conditions and from the CEQA mandatory “no project” alternative.

The Draft PEIR for the Delta Plan, consisting of Volumes 1 and 2, was issued for public review and comment for 90 days beginning in November 2011 and ending in February 2012. The Draft PEIR analyzed the August 2011 Fifth Staff Draft Delta Plan, which is referred to in Volumes 1 and 2 as the “Proposed Project” or “Project.” After the close of the comment period on the Draft PEIR, the Council

reviewed and considered the public comments, and concluded that the draft Delta Plan should be revised. In order to provide an opportunity for public review and comment on the environmental effects of the revisions to the proposed Delta Plan, a Recirculated volume of the Draft PEIR (Volume 3) was issued for public review and comment for 45 days beginning November 30, 2012 and ending January 14, 2013. The draft Delta Plan analyzed in Volume 3 is the November 2012 Final Draft Delta Plan (“Final Draft Delta Plan”), which is referred to as the “Revised Project.”

### **1.0 Authority and Jurisdiction of the Delta Stewardship Council: The Coequal Goals, the Delta Plan, and Covered Actions.**

The Sacramento-San Joaquin Delta Reform Act of 2009 (“Delta Reform Act”), Water Code section 85000 *et seq.*, requires the Council to develop, adopt and implement a “Delta Plan . . . that furthers the coequal goals” (Water Code § 85300), and requires specified state and local actions identified as “covered actions” to be consistent with the Delta Plan (Water Code §§ 85022 and 85057.5).

**1.1 Coequal Goals.** The coequal goals are defined in the Delta Reform Act as “providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem . . . in a manner that protects and enhances the unique cultural, recreational, natural resources, and agricultural values of the Delta as an evolving place.” Water Code § 85054. Furthering achievement of the coequal goals requires a balancing of interests and tradeoffs. The Delta Plan seeks to ensure that these decisions are made in a timely and open manner, and are based on best available science. Final Draft Delta Plan, pp. 21-26.

**1.2 Covered Actions.** A covered action is any plan, program or project, which is defined as a project in Public Resources Code section 21065, that (1) will occur in whole or in part in the Delta (which includes the Suisun Marsh); (2) will be carried out, approved or funded by a state or local public agency; (3) is covered by one or more provisions of the Delta Plan; and (4) will have a significant impact on achievement of one or both of the coequal goals or implementation of government sponsored flood control programs. Water Code § 85057.5(a)(1)-(4); see Draft PEIR (Volume 1) Section 2.1 (pp. 2A-2 to 2A-4 and Final Draft Delta Plan, pp. 55-57. Because covered actions must occur in whole or in part in the Delta, transferring water through the Delta for use downstream would be a covered action, but diversion and use of water entirely upstream from the Delta would not be a covered action. Final Draft Delta Plan, p. 56. Other examples of covered actions could include development of land and construction of infrastructure, but only if they occur in or partially within the Delta and may have a substantial positive or negative impact on either the ability to provide a more reliable water supply for California or the ability to protect, restore or enhance the Delta ecosystem or the implementation of a government-sponsored flood control program to reduce risks to people, property, and state interests in the Delta.

The authority of the Council is governed by the Delta Reform Act; therefore, neither the Delta Plan nor this PEIR can change the definition of “covered action” from what the Legislature has defined. As explained in the Draft PEIR (Volume 1) on page 2B-2, footnote 3, the Council must always act “within the limits of the Delta Reform Act.” However, consistent with the requirement in CEQA that the PEIR analyze both the direct and indirect significant effects on the environment of the proposed project (CEQA Guidelines § 15126.2(a)), the PEIR conservatively assumes that the Delta Plan policies and recommendations will encourage other agencies to take actions that may have an effect on the physical environment, thus indirectly leading to significant environmental

impacts in some cases. Draft PEIR (Volume 1) Section 2.2 (pp. 2B-1 to 2B-2). There is no proposal in the Delta Plan to expand the definition of covered action. As explained on Draft PEIR page 2B-2, footnote 3, the Council would always act “within the limits of the Delta Reform Act.” Because the authority of the Council is governed by the Delta Reform Act, the Council does not have the power to make changes in the law, as requested or suggested by some commenters, such as laws and regulations relating to water rights, water quality, and greenhouse gas emissions.

**1.3 Consistency Review, Certification of Consistency, and Appeals.** Covered actions are subject to review for consistency with the Delta Plan. Water Code § 85022. Any state or local agency that proposes to undertake a covered action must prepare a written “certification of consistency” that the covered action is consistent with the Delta Plan, and submit the certification to the Council. Water Code § 85225. The certification of consistency is appealable to the Council. Water Code §§ 85225.10-85225.30. The appeal procedure in the draft Delta Plan analyzed in the PEIR is consistent with the requirements of the Delta Reform Act and the Council’s Administrative Procedures Governing Appeals (adopted September 23, 2010 pursuant to Water Code section 85225.30). Final Draft Delta Plan, p. 59. Following the hearing on the appeal, if the Council finds that the covered action is not consistent with the Delta Plan, the State or local agency may either revise the project and submit a revised certificate of consistency (Water Code § 85225.25) or decide not to proceed with the covered action. The State or local agency may not proceed with the covered action, however, unless it is consistent with the Delta Plan. Water Code § 85022(a). Following an initial appeal, a subsequent appeal would only be permitted if the consistency determination were revised.<sup>1</sup> See Water Code § 85225.25; Administrative Procedures Governing Appeals, ¶ 15. This process, consisting of consistency review and certification and possible appeal, is simply the implementation and enforcement mechanism to give the Delta Plan policies regulatory influence over covered actions. This mechanism, by itself, has no environmental impacts distinct from the impacts of the policies themselves or the projects encouraged by the Delta Plan, which the PEIR evaluates.

**1.4 Categories of Projects That Would Not Have a Significant Impact on the Coequal Goals or a Government-Sponsored Flood Control Program for Purpose of the Definition of Covered Action.** Some projects are not covered actions and, therefore, are not subject to consistency review. The projects that are not covered actions because they would not have a significant impact on the coequal goals or a government-sponsored flood control program, and are not required to undergo consistency review, include the following (see Section 2 of the Final PEIR for a complete list):

- A regulatory action of a state agency; routine operation and maintenance of the State Water Project, the federal Central Valley Project, or other local public agency facilities; regional transportation plans; plans, programs, projects and actions that are consistent with a sustainable communities strategy or the equivalent; and certain grandfathered projects, all as listed in Water Code section 85057.5(b).
- Ministerial projects exempted from CEQA pursuant to Public Resources Code section 21080(b)(1).
- Emergency projects exempted from CEQA pursuant to Public Resources Code section 21080(b)(2)-(4).

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<sup>1</sup> This may occur if the initial consistency determination is found to be inadequate and requires modification to the project to become consistent, or if the project is changed and requires a new consistency determination.

- Temporary water transfers of up to one year in duration. This exemption will expire on December 31, 2016 unless extended by the Council.
- Other projects that are exempt under CEQA statutes or guidelines, unless there are unusual circumstances indicating that the project may have a significant impact under Water Code Section 85057.5(a)(4).

Which projects may be exempt from the definition of a covered action, however, is of limited relevance to the PEIR's analysis of significant effects on the environment. As stated above, the Council and its Delta Plan seek to influence the actions of others (even those actions that are not covered actions) toward furthering achievement of the coequal goals. Accordingly, the PEIR evaluates the potential environmental consequences of physical actions the Delta Plan hopes other agencies will take – whether covered actions or not. See Part 1.2, above.

**1.5** The following responds to questions that were raised in the comments on the Draft PEIR and Recirculated Draft PEIR about whether specific actions or projects are covered actions:

- 1.5.1 Water projects entirely upstream of the Delta would be covered actions if they transfer water through the Delta. Water Code § 85057.5(a)(1)-(4); Final Draft Delta Plan, p. 56. See Part 1.2, above.
- 1.5.2 The Monterey Amendments to the State Water Project, which involved transferring ownership of the Kern Water Bank to the Kern County Water Agency, were adopted by the Department of Water Resources in 2010 and are, therefore, part of the existing conditions. Future renewals of long-term State Water Project contracts could be covered actions if they meet the criteria defining a covered action and are not exempt. See Part 1.2, above.
- 1.5.3 Land use plans, development projects and land use “entitlements” or approvals, whether in the Primary Zone of the Delta or in urbanized areas within the Secondary Zone would not be covered actions unless they meet the remaining criteria defining a covered action (e.g. if they would have a significant impact on the achievement of the coequal goals or a government sponsored flood control program) and are not exempt, and are covered by one or more regulatory policies of the Delta Plan. See Draft PEIR (Volume 1), pp. 6-1 to 6-2 (explanation of the Primary and Secondary Zones of the Delta).
- 1.5.4 Regional transportation plans prepared pursuant to Government Code section 65080 are exempt from the definition of covered action. Water Code § 85057.5(b)(3). Any plan, program, project or activity within the Secondary Zone of the Delta that the applicable metropolitan planning organization has determined is consistent with a sustainable communities strategy or other approved greenhouse gas reduction strategy, also is exempt from the definition of covered action. Water Code § 85057.5(b)(4). These exemptions would apply to the following: (i) SACOG regional planning documents meeting this definition; (ii) congestion management programs prepared pursuant to Government Code section 65089, which are also exempt from CEQA (Public Resources Code § 21080(b)(13)) ; (iii) other transportation plans, and subsequent transportation improvement projects implementing exempt plans, if they are within one of the exemptions listed in the Delta Plan (Final Draft Delta Plan, pp. 57-58) or are covered by a CEQA exemption. For any projects, plans, and programs that are not exempt, the consistency determination would add only a negligible amount of

additional time to the public review process because CEQA review by the state or local lead agency would be required in any event. In addition, delay in implementing plans and increased costs generally are economic or social impacts, not environmental impacts.

- 1.5.5 *Regulatory* actions of state agencies are not covered actions. However, the “underlying actions” (i.e., implementing the regulated projects) may be covered actions. For example, issuance by a Regional Water Quality Control Board of an NPDES permit/waste discharge requirements for a wastewater treatment plant is exempt because it involves a state regulatory action, and also because issuance of waste discharge requirements is exempt from CEQA. CEQA Guidelines § 15263; Water Code § 13389. However, construction or expansion of the wastewater treatment plant - which is the underlying action - could be a covered action if it meets all of the relevant criteria including having a significant impact on achievement of the coequal goals or achievement of government sponsored flood control programs (see Part 1.2, above), and is covered by one or more of the Delta Plan’s regulatory policies. Flood control and levee projects, even if otherwise in compliance with state and federal laws in the Secondary Zone, are not exempt because the Secondary Zone is part of the Delta. Furthermore, flood control projects are not exempt unless (1) the project consists only of routine maintenance and operation of a “facility” owned or operated by a local public agency (Water Code § 85057.5(b)(5)), or (2) the project is within one of the CEQA-related exemptions listed in the Delta Plan (i.e., ministerial projects, emergency projects, or other CEQA exemptions if there are no “unusual circumstances”). Final Draft Delta Plan, pp. 57-58.
- 1.5.6 Buildings and facilities for agriculture and recreation would not be covered actions unless they are located in whole or in part in the Delta, meet the remaining criteria defining a covered action, and are not exempt. Because few buildings and facilities for agriculture are subject to discretionary governmental approvals, and many others are otherwise categorically exempt from CEQA, it is anticipated that buildings and facilities for agriculture will rarely, absent unusual circumstances, be covered actions.
- 1.5.7 The approval of a Habitat Conservation Plan (“HCP”) (as compared to actions by California agencies implementing a HCP) would not be a covered action, because HCPs must be approved by the United States Fish and Wildlife Service (“USFWS”), which is a federal agency and not a state or local public agency. See Water Code § 85057.5(a)(2). Nor is approval of a Natural Communities Conservation Plan (“NCCP”) by the Department of Fish and Wildlife (“DFW”) a covered action because it is a regulatory action of a state agency. Water Code § 85057.5(b)(1). NCCP and HCP *implementation* actions are not listed as exempt projects in the Delta Plan or the Delta Reform Act. Depending on the specific characteristics of each such implementation action and each site, however, NCCP/HCP implementation actions may be exempt and not considered to be covered actions if they would not have a significant impact on achievement of the coequal goals and/or no significant environment effects. A conservation measure proposed to be implemented pursuant to a NCCP or HCP that was developed by a local government in the Delta and approved and permitted by DFW prior to the date of the Delta Plan’s adoption is deemed to be consistent with the ecosystem restoration-related policies if the certification of consistency includes a statement from DFW confirming the nature of the conservation

measure. See Final PEIR, Section 2 (Policy G P1). Requiring actions taken to implement approved NCCPs or HCPs to be consistent with the Delta Plan would not have any significant effects on the environment that are not evaluated in this PEIR.

- 1.5.8 If the Bay Delta Conservation Plan (“BDCP”) is incorporated into the Delta Plan, an agency proposing a qualifying “covered activity” under the BDCP that also meets the statutory definition of a covered action must file a short form certification of consistency with findings indicating only that the covered action is consistent with the BDCP. Consistency for these purposes shall be presumed if the certification filed by the agency includes a statement to that effect from the California Department of Fish and Wildlife. Final Draft Delta Plan, p. 59. Requiring actions taken to implement the BDCP to be consistent with the Delta Plan would not have any significant effects on the environment that are not evaluated in this PEIR. See Part 3.2, below, regarding the relationship of the Delta Plan to the BDCP.
- 1.5.9 Infrastructure and transportation projects that are consistent with adopted general plans and specific plans may not be covered actions if they are exempt, do not meet the criteria for a covered action, or if they are not covered by one or more regulatory policies of the Delta Plan.

## 2.0 The Delta Plan.

The Delta Plan contains policies, recommendations, performance measures, and issues for future evaluation and coordination, each of which is described below.

- 2.1 Policies.** The Delta Plan policies are mandatory, and will have regulatory effect on state and local agencies proposing to implement covered actions. For non-covered actions, the policies will function as recommendations. Agencies approving covered actions are required to make a consistency determination that is submitted to the Council, but no further action is taken unless the consistency determination is appealed to the Council. Hence, the regulatory effect of the Delta Plan policies is administered through the consistency determination and appeal process described in Part 1.3, above. It is correct, therefore, that under these procedures the Council does not review proposed projects for consistency with the Delta Plan except on appeal. The summary text on Draft PEIR page 2A-1 is accurate and consistent with the Delta Reform Act. The authority to require Delta Plan policies to be carried out is enforced through Council review of covered actions when consistency determinations are appealed.
- 2.2 Recommendations.** Recommendations are non-regulatory in nature for both covered and non-covered actions; therefore, the language of the recommendations is not mandatory as it is for the policies. One purpose of the Delta Plan is to “guide” state and local agency actions. Water Code § 85300(a). Most of the recommendations are directed at other agencies, which may or may not choose to implement all or a part of the recommended actions. For example, recommendation WR R1 states that “[a]ll water suppliers should implement applicable water efficiency and water management laws, including water management plans . . .” Final Draft Delta Plan, p. 109. Other recommendations are directed toward the Department of Water Resources (see, e.g., WR R2 and WR R5), the State Water Resources Control Board (see, e.g., WR R3), water suppliers (see, e.g., WR R10), and local and regional agencies (see, e.g., WR R11). See Final Draft Delta Plan, pp. 109-111 and p. 115 (Timeline). The roles of agencies with responsibilities in the Delta are summarized in Table 2-1, page 41 of the Final Draft Delta Plan. The Council

also may choose to implement some of the recommendations through future studies or future Delta Plan amendments involving adoption of new policies. Draft PEIR (Volume 1), Section 2.1.1, p. 2A-2.

- 2.3 Performance Measures.** Performance measures are required by the Delta Reform Act. Water Code §§ 85211, 85308. The Delta Plan performance measures are measures to assist in implementation of the policies and recommendations. The draft Delta Plan has three types of performance measures: (1) administrative performance measures, which describe decisions by policy makers and managers to finalize plans or approve resources for implementation of projects and milestones for completion; (2) output performance measures, which evaluate factors that may be influencing outcomes of Delta Plan implementation actions as well as natural phenomena that are outside of management control (many of these can be quantified, such as acres of habitat restored); and (3) outcome performance measures that evaluate responses to both management actions and natural outputs (many of these also are quantifiable). The administrative performance measures are listed in Appendix C of the Delta Plan. The output and outcome performance measures are identified at the end of each chapter of the Delta Plan. The performance measures will be refined based on scientific study, independent expert review panels, and consulting with stakeholders. Final Draft Delta Plan, p. 53. For example, the performance measures for Delta ecosystem restoration involve hydrological monitoring and hydrodynamic modeling; surveys of the abundance and distribution of species; monitoring surveys of the occurrence, use and performance of native species in restored habitats and corridors; and measuring progress in terms of flow objectives, acres of restored habitat, and similar metrics. Final Draft Delta Plan, p. 165. The Delta Plan performance measures are part of the Delta Plan, and would not have any significant effects on the environment that are not evaluated in this PEIR.
- 2.4 Issues for Future Evaluation and Coordination.** Issues for future evaluation and coordination (which the Fifth Staff Draft Delta Plan did not include) are issues that the Delta Plan recommends for the Council or other agencies to consider when additional information becomes available and may deserve consideration in the development of future Delta Plan updates. Recirculated Draft PEIR, p. 2-3; see, e.g., Final Draft Delta Plan, pp. 116-117 (reliable water supply issues for future evaluation and coordination). Because these issues are identified for future study and not for any other purpose, they are not specific enough to evaluate, the Council is making no commitment to any future approval action, and it is not reasonably foreseeable that they would lead, directly or indirectly, to a substantial adverse change in the physical environment.
- 2.5 Project Objectives.** The project objectives, which are stated in the PEIR as required by CEQA Guidelines section 15124, express the “underlying purpose” of the Project. CEQA Guidelines § 15124(b). The project objectives identified in Section 1.1 of the Draft PEIR (Volume 1) (p. 1-4) and Recirculated Draft PEIR Section 2.19 (p. 2-25) (technical correction),<sup>2</sup> accordingly, are the purposes of the Delta Plan as defined by the Legislature in the Delta Reform Act, which are to “further achievement of the coequal goals and the eight ‘inherent’ objectives, in a manner that: (1) furthers the statewide policy to reduce reliance on the Delta in meeting the State’s future water supply needs through regional self-reliance, (2) is consistent with specific statutory content requirements for the Delta Plan (Water Code §§ 85302(c)-(e), and 85303-85308), (3) is implementable in a comprehensive, concurrent and interrelated fashion, and (4) is accomplished as rapidly as realistically possible without jeopardizing ultimate success.” The project description,

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<sup>2</sup> See also Draft PEIR (Volume 1) Section 1.1 (pp. 1-1 to 1-4) for additional detail.

which is separate from the project objectives, consists of “[a] general description of the project’s technical, economic, and environmental characteristics,” as required by CEQA Guidelines section 15124(c).

### 3.0 Relationship of Delta Plan to Other Programs, Projects, and Regulatory Actions.

**3.1 Regulatory Setting.** The “setting” portion of each resource section of the PEIR describes the regulatory setting applicable to that resource. For example, Draft PEIR Subsection 3.2 cross-references the Regulatory Framework for the Water Resources Section of the PEIR, which is set forth in full in Draft PEIR Appendix D. Section 1.0 of Appendix D lists and describes the “Federal and State plans, policies, regulations and laws, and regional or local plans, policies, regulations and ordinances pertaining to water resources . . . discussed in [the Water Resources] section.” Where consistency with plans, policies, laws and regulations is pertinent to the determination of whether there may be a significant effect on the environment, that issue is analyzed in the PEIR. Consistency with plans, policies, laws, and regulations also may be relevant to the determination of the feasibility of mitigation measures and alternatives, which will be determined in the CEQA findings.

**3.2 Bay Delta Conservation Plan.** The Delta Reform Act requires the Delta Plan to promote options for new and improved infrastructure relating to, among other things, the water conveyance in the Delta. Water Code § 85304. It does this by encouraging successful completion of the BDCP by a date-certain. See Final Draft Delta Plan, p. 112 (Recommendation WR R12). As explained in Sections 23.1 and 23.2 of the Draft PEIR (pp. 23-1 to 23-5), the BDCP is an HCP and NCCP, which is being developed through a collaboration of numerous parties, that will cover new and existing water facilities, habitat restoration and enhancement, and research. Draft PEIR, Sections 23.1 and 23.2, pp. 23-1 to 23-5. In the Project Description section of the Draft PEIR, it is described as a Water Reliability conveyance project being undertaken by other agencies. Draft PEIR Section 2.2.1.8, p. 2A-24. The Department of Water Resources (“DWR”) is the CEQA lead agency for the BDCP. Draft PEIR, p. 23-1. As explained below, the BDCP shall be incorporated into the Delta Plan (and the associated public benefits become eligible for state funding) if it satisfies the specific performance requirements set forth in the Delta Reform Act, as determined by the Department of Fish and Wildlife (“DFW”). Water Code § 85320(e). Delta Plan Recommendation WR R12 recommends that the BDCP be completed by December 31, 2014, but does not make any recommendations about the content of the BDCP. Final Draft Delta Plan, p. 112; Recirculated Draft PEIR, p. 23-2.

A partial Revised Administrative Draft Bay Delta Conservation Plan was released by the California Resources Agency in March 2013 (CRA 2013). This administrative draft contains revised planning goals that elaborate on the prior goals, and conservation strategies for more species and natural communities than originally covered. As of the date of this response, the draft BDCP and the Draft EIR for the BDCP are scheduled to be released for public review and comment in late Summer 2013.

If the DFW approves the BDCP as a Natural Communities Conservation Plan (“NCCP”), then the Council “shall have at least one public hearing concerning the incorporation of the BDCP into the Delta Plan” (Water Code § 85320(d)), and if the BDCP is also approved as a federal Habitat Conservation Plan (“HCP”) “the Council shall incorporate the BDCP into the Delta Plan” if the DFW determines that the BDCP meets the statutory requirements, which determination is appealable to the Council. Water Code § 85320(e) (emphasis added). Regarding development of BDCP, DWR “shall consult with the [C]ouncil...during the development of the BDCP [and] [t]he [C]ouncil shall be a responsible agency in the development of the [BDCP] environmental impact report.”

Water Code § 85320(c); Draft PEIR, p. 23-1. In other words, the Council is not the lead agency for BDCP.

If the BDCP is approved and included in the Delta Plan, the parts of the BDCP that become Delta Plan policies will also become part of the basis for future consistency determinations. Draft PEIR (Volume 1), p. 2A-24. The Council's role with regard to the BDCP will be to consider any appeal of the short form certification of consistency filed with regard to a covered action taken to implement the BDCP portion of the Delta Plan; however, consistency with the Delta Plan must be presumed if the certification of consistency includes a statement from the DFW that the proposed action is consistent with the BDCP. Final Draft Delta Plan, p. 59. The Council may make recommendations to the BDCP implementing agencies regarding BDCP implementation, and those agencies must consult with the Council on these recommendations. The Council's recommendations shall not, however, change the terms and conditions of the state NCCP and federal HCP regulatory permits. Water Code § 85320(g). Governance of the Delta Plan as a whole will involve the Council's establishing and overseeing an interagency implementation committee as required by Water Code section 85204. One of the members of the interagency implementation committee will be the Delta Protection Commission, which has the authority to provide recommendations to the Council on methods of preserving the Delta as an evolving place. Final Draft Delta Plan, pp. 50-51; Public Resources Code § 29773(a). Enforcement of regulatory permits issued to BDCP projects and enforcement of adopted CEQA and NEPA mitigation measures will be within the jurisdiction and responsibility of the permitting agencies (e.g., USFWS and DFW), not the Council.

In addition to being a CEQA responsible agency for the BDCP EIR, the Council's other roles under the Delta Reform Act with regard to the BDCP are as follows: consulting with DWR during the development of the BDCP (Water Code § 85320(c)); receiving status report once per year from DWR and DFW on BDCP implementation (Water Code § 85320(f)); making recommendations to the BDCP implementing agencies regarding the implementation of the BDCP (Water Code § 85320(g)); and considering any appeals of a short form certification of consistency filed with regard to a covered action taken to implement the BDCP portion of the Delta Plan (Final Draft Delta Plan, p. 59).

As explained in Draft PEIR (Volume 1) Subsection 23.2.1.1 (pp. 23-2 to 23-3), under the Delta Reform Act the Council will have a role in deciding on conveyance improvements only if an agency proposes a conveyance improvement after the Delta Plan is approved, but before the BDCP is approved; the proposed conveyance improvements is a covered action; and the certification of consistency for the covered action is appealed to the Council. The other specific requirement in the Delta Reform Act with regard to conveyance is for the Delta Plan to "promote options for new and improved infrastructure relating to the water conveyance in the Delta." Water Code § 85304. As explained in the Draft PEIR on page 23-5, the proposed Delta Plan does not make any recommendations regarding conveyance at this time because the Council has determined that the BDCP agencies are in the best position to complete the planning process, including defining acceptable ranges of exports and through-Delta flows. Accordingly, the PEIR does not evaluate the potential environmental consequences of various BDCP options that DWR may be considering. Nevertheless, the options under consideration by DWR at the time the Draft PEIR was published are described at length in Draft PEIR Section 23.3 (pp. 23-5 to 23-23), and other alternatives being considered are within this range of options (CRA 2013).

The Delta Plan does not determine Delta flow criteria,<sup>3</sup> the amounts of water available to various categories of water uses/users, or recommend a conveyance plan. The analysis of these issues is being undertaken by other agencies. Nevertheless, the Delta Plan recognizes that these activities are ongoing and, at least some, may have a cumulative effect. BDCP planning and environmental review are underway, under the auspices of DWR; therefore, the BDCP is a reasonably foreseeable, probable future (cumulative) project pursuant to Public Resources Code section 21083(b)(2) and CEQA Guidelines section 15130(b)(1). That is why the BDCP is analyzed as one of the cumulative projects in Section 22 (Cumulative Impact Assessment) of the PEIR. See also Draft PEIR, p. 23-1 and Subsection 23.5 (p. 23-28) and Recirculated Draft PEIR pp. 23-2 to 23-3 (describing the relationship between the Delta Plan and the BDCP, which is a cumulative project); Draft PEIR, p. 22-24, Table 22-1 (list of cumulative projects); Draft PEIR Section 23.6 (pp. 23-29 to 23-36) and Recirculated Draft PEIR Section 23.6 (pp. 23-3 to 23-10) (describing the cumulative impacts of implementing the BDCP). Mitigation for cumulative impacts is identified in the applicable resource sections.

The Council does not agree that the Delta Plan is a “condition precedent” to the BDCP or that the BDCP is effectively a part of the Delta Plan. On the contrary, the BDCP is an independent state/federal project consisting of a HCP/NCCP that proposes major physical changes to the Delta, including new diversion and conveyance facilities and their operational criteria, extensive new aquatic habitat, and other measures to help reverse the Delta’s ecological decline and secure water supplies from the Delta for human use. Final Draft Delta Plan, p. 97; see Draft PEIR, p. 23-1. The Delta Reform Act recognizes that the BDCP will be prepared separately from the Delta Plan. Water Code § 85320(a) (“The [BDCP] shall be considered for inclusion in the Delta Plan in accordance with this chapter.”). A joint EIS/EIR is being prepared for the BDCP by the state and federal lead agencies and other cooperating state and federal agencies. See Water Code § 85320(c) (“[t]he council shall be a responsible agency in the development of the [BDCP] environmental impact report”).

For the same reasons, the Council does not agree that the Delta Plan commits the State to the BDCP. The Delta Plan recognizes the Council’s role with regard to the BDCP as established in the Delta Reform Act and as summarized in this Part. The Delta Reform Act requires the Council to consider the BDCP for inclusion in the Delta Plan or, under certain circumstances, to incorporate the BDCP into the Delta Plan once it is completed. The BDCP could be approved and implemented whether or not the Delta Plan is approved. Moreover, as stated above, the Delta Plan recommends completion of the BDCP within a reasonable time frame (by December 31, 2014), but does not make any recommendations about the content of the BDCP. Final Draft Delta Plan, p. 112; Recirculated Draft PEIR, p. 23-2. The Council also does not agree that Delta Plan policies and recommendations that may affect new intakes, diversions, and habitat restoration projects in the Delta (WR R3, WR R12 through WR R15, ER P2 through ER P4, ER R1 through ER R3) constitute specific policies and recommendations regarding the BDCP. On the contrary, the Delta Plan does not make any recommendations or contain any policies about the content of the BDCP. Once the BDCP is incorporated into the Delta Plan, projects implementing the BDCP must be presumed to be consistent with the BDCP and the Delta Plan if the certification of consistency includes a statement from the DFW that the proposed action is consistent with the BDCP, regardless of any

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<sup>3</sup> See Part 3.4, below, regarding SWRCB adoption of flow criteria and flow objectives.

potentially conflicting Delta Plan policies recommendations. Final Draft Delta Plan, p. 59.

The No Project Alternative does not assume completion of the BDCP, but only that ongoing studies by others related to the BDCP would continue on their current course. Draft PEIR, p. 2A-87 and pp. 2A-90 to 2A-91 (Table 2-5). The No Project Alternative assumes continued variability and uncertainty in water resources due to changes in the ratio of rainfall to snowfall and the timing of storm events (climate variability) and constraints based on continued declines in populations of threatened or endangered fish, both of which may lead to reductions in the amount of Delta water available to users outside the Delta. The change in amount of water exported under each of the alternatives is not directly related to the proposed BDCP (which is analyzed as a cumulative project as explained above), but is based on four broad categories of comments received by the Council during the scoping process that were translated into four alternative approaches to the proposed Delta Plan and analyzed in addition to the CEQA mandatory “no project” alternative. Draft PEIR, pp. 2A-65 to 2A-66. Following the release of Draft PEIR Volumes 1 and 2 for public review and comment, and the Council’s consideration of the comments on the Draft PEIR, a new alternative (the Revised Project) was developed and is the subject of the Recirculated Draft PEIR, which is Volume 3 of the Draft PEIR.

Comments and questions about the effects of any proposed conveyance (i.e., BDCP) on harbors and on salmon due to fluctuations in water levels, impacts related to any proposed conveyance due to liquefaction, the depth of the proposed tunnel, and the stability of the proposed conveyance during an earthquake should be directed to DWR.

- 3.3 CALFED Program.** Water Code section 85034(b) designates the Council as the successor to the California Bay-Delta Authority, which was the state agency charged with coordination of the state-federal effort known as the “CALFED Program.” However, the Delta Plan, as defined in the Delta Reform Act, not the CALFED program, is the subject of this PEIR. The CALFED program was adopted by a different lead agency, following completion of environmental review by that agency, and prior to the creation by the Legislature of the Delta Stewardship Council. There is no requirement in CEQA or in the Delta Reform Act to compare the Delta Plan PEIR to the certified CALFED EIR, which was prepared by a different lead agency for a different project. While the Council is the successor to the administrative duties of the California Bay-Delta Authority, it is an entirely new entity with a new legislative mission. See, e.g., Water Code § 85020(h) (requiring establishment of a new governance structure to achieve the statutory objectives for management of the Delta). As explained in Section 1.1 of the Draft PEIR (pp. 1-1 to 1-4), the goals and objectives of the Delta Plan are defined in the Delta Reform Act.

Both the No Project Alternative and the draft Delta Plan assume that the existing conditions at the time the Notice of Preparation was published, such as projects started under the CALFED Program, exist and would continue to be implemented. The Council is unaware of any inconsistencies between the Delta Plan and CALFED that would have a significant effect on the environment.

- 3.4 Delta Flow Objectives.** As stated in the Delta Reform Act, and as reflected in the Delta Plan and disclosed in the PEIR, the State Water Resources Control Board (“SWRCB”) is responsible for establishing flow criteria and objectives. Water Code §§ 85086(c)(1) (“the [State Water] board shall, pursuant to its public trust obligations, develop new flow criteria for the Delta ecosystem . . .”) and 85086(e) (“the [State Water] board shall submit its flow criteria determination . . . to the council for its information within 30 days of completing the determinations”); Draft PEIR, pp. 2A-5 to 2A-6.

The SWRCB adopted Resolution No. 2010-0039 on August 3, 2010 approving “the report determining new flow criteria for the Delta ecosystem that are necessary to protect public trust resources,” and submitting the report to the DSC “for its information.” The next steps are for the SWRCB to develop flow and water quality objectives to address all beneficial uses, including public trust resources, in the Delta and upstream tributaries. Development of the flow and water quality objectives for the Sacramento and San Joaquin rivers and the Bay-Delta will be informed by the flow criteria report for Delta ecosystem. However, the recommendations in the flow criteria report were limited to protection of aquatic resources, and did not consider other beneficial uses, other public trust resources, and public interest concerns. After the SWRCB adopts flow and water quality criteria, the flow objectives will be presented to the Council for incorporation into the Delta Plan. Some commenters propose that the Delta Plan should specify a range of acceptable flows to guide other agencies. In the Delta Reform Act, the Legislature has assigned the task of developing flow criteria and objectives, for the purpose of informing planning decisions for the Delta Plan, to the SWRCB. Water Code § 85086(c)(1).

Delta Plan policy ER P1 states that “The SWRCB’s Bay Delta Water Quality Control Plan flow objectives shall be used to determine consistency with the Delta Plan. If and when the flow objectives are revised by the SWRCB, the revised flow objectives shall be used to determine consistency with the Delta Plan.” Modified Text of Proposed Regulation, 4/4/2013; see also Water Code § 85086(b). Policy ER P1 does not recommend that the SWRCB cease issuing water rights permit in the Delta and Delta watershed. New recommendation ER R1 recommends that the SWRCB should adopt updated flow objectives for the Delta by June 2, 1014 and adopt flow objectives for high-priority tributaries to the Delta by June 2, 2018. As stated above, pursuant to Policy ER P1, revised flow objectives will be used to measure consistency with the Delta Plan.

The Delta Plan only recommends that the SWRCB do, by a particular time, what the law already requires the SWRCB to do, at least regarding flow objectives. The Delta Plan does not suggest any particular objectives. A recommendation as to the timing of the adoption of flow objectives has no reasonably foreseeable adverse environmental consequences distinct from the objectives themselves, which SWRCB will evaluate when it adopts them. As to the recommendation that flow objectives for high-priority tributaries be established by 2018, the impacts of encouraging the SWRCB to adopt flow objectives are analyzed in the PEIR. See Recirculated Draft PEIR, p. 3-9 (Impact 3-3b) and Master Response 5.

- 3.5 Public Trust Doctrine.** The public trust doctrine is expressly incorporated by the Legislature into the Delta Reform Act and, therefore, into the Delta Plan. Water Code section 85023 finds that the public trust doctrine is “particularly important,” and requires the public trust doctrine and the reasonable use principle to be the “foundation of state water management policy.” Water Code section 85032(h) declares that the Delta Reform Act “does not affect . . . [t]he application of the public trust doctrine.” The public trust doctrine is also embodied in the coequal goals, which are the goals of “providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem . . . in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” Water Code § 85054. Water Code section 85086(c)(1) requires the SWRCB to develop new flow criteria for the Delta ecosystem pursuant to its public trust obligations.” Pursuant to Water Code section 85300(a), the Delta Plan must further the coequal goals. The Delta Plan does not propose changes in the public trust doctrine, nor does it impede enforcement of the public trust. See Final Draft Delta Plan, pp. 81-83. As described

above, the Delta Plan is required to be consistent with the public trust doctrine. Recognition of the public trust doctrine in the Delta Plan has no potential adverse environmental consequence, if any, distinct from those of the Delta Plan's policies and recommendations, which potential consequences are evaluated in this PEIR.

- 3.6 Delta Protection Commission.** Water Code sections 85301(a) and 85301(b)(2) require the Delta Protection Commission ("DPC") to prepare a proposal to protect, enhance, and sustain the Delta as a place, which shall include a regional economic plan. The proposal must be submitted to the Council to consider for inclusion in the Delta Plan. Water Code § 85301(d). The DPC also has the authority to provide recommendations to the Council on methods of preserving the Delta as an evolving place, which the Council is required to consider. Final Draft Delta Plan, pp. 50-51; Public Resources Code §§ 29773(a) and 29773(b). The Council has concurrent jurisdiction with the DPC to oversee local land use planning in the Primary Zone of the Delta. Water Code §§ 85022(a), 85022(d)(1)-(6); Final Draft Delta Plan, pp. 187-189; Draft PEIR Appendix D, Sections 4.2.2 and 4.2.3.

The DPC's *Proposal to Protect, Enhance, and Sustain the Unique Cultural, Historical, Recreational, Agricultural, and Economic Values of the Sacramento-San Joaquin Delta as an Evolving Place* was completed in January 2012, and included DPC's *Economic Sustainability Plan for the Sacramento-San Joaquin Delta*. Both documents were submitted to the Council for consideration in preparing the Delta Plan. Final Draft Delta Plan, pp. 178-179. Most of the DPC's recommendations were accepted and incorporated into the Final Draft Delta Plan. The *Land Use and Resource Management Plan for the Primary Zone of the Delta* ("Management Plan") was adopted by the DPC in February 2010, and guides land uses in the Primary Zone of the Delta. Local general plans must be consistent with the *Management Plan*, and local land use actions may be appealed to the DPC for consistency. Although the Council has concurrent jurisdiction with the DPC in the Primary Zone, the Council does not enforce the *Management Plan* nor is that plan incorporated into the Delta Plan.

- 3.7 Water Rights.** The Delta Reform Act requires all covered actions to be consistent with the Delta Plan but does not affect water rights or water permits/licenses, which are administered by the SWRCB and DWR. On the contrary, the Delta Reform Act expressly "does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections . . ." or "[a]ny water right." Water Code §§ 85031(a) and 85032(i). Accordingly, the Delta Plan does not propose any changes in water rights, including priorities, seniority, or area of origin rules or laws, nor does the Council have the authority to do so, and changes in water rights are not part of the draft Delta Plan analyzed in the PEIR. As explained in Part 1.4, above, regulatory actions of state agencies are not covered actions. Following the adoption of its flow objectives, the SWRCB will engage in a further public proceeding, including complete environmental review, concerning implementation of the objectives, which may include altering water rights.

The Delta Plan is required to further achievement of the coequal goals, one of which is providing a more reliable water supply for California. Water Code §§ 85300, 85054. Thus, any covered action that would have a significant impact on providing a more reliable water supply would be inconsistent with the Delta Plan regardless of the nature of the underlying water rights or the identity/priority of the water rights holder. Covered actions cannot be limited to water exports from the Delta, because the Delta Reform Act defines "covered action" to include plans, programs, or projects that occur in whole "or in

part” within the Delta, which would include using water in the Delta or transferring water through the Delta. Water Code § 85057.5(a)(1). See Part 1.2, above.

Recommendation WR R5 from the Fifth Staff Draft Delta Plan was renumbered in the Final Draft Delta Plan (it is now WR R3) and amended to read as follows:

“The State Water Resources Control Board should evaluate all applications and petitions for a new water right or a new or changed point of diversion, place of use, or purpose of use that would result in new or increased long-term average use of water from the Delta watershed for consistency with the constitutional principle of reasonable and beneficial use. The State Board should conduct its evaluation consistent with Water Code sections 85021, 85023, 85031, and other provisions of California law. An applicant or petitioner should submit to the State Water Resources Control Board sufficient information to support findings of consistency, including, as applicable, its urban water management plan, agricultural water management plan, and environmental documents prepared pursuant to CEQA.” Final Draft Delta Plan, p. 109.

Hence, this recommendation no longer requires a showing that all other feasible water supply alternatives have been evaluated and implemented. While it is possible that environmental review for future projects could be tiered from this PEIR pursuant to one of the tiering provisions of CEQA and the CEQA Guidelines, it is more likely that the lead agency will determine that new environmental review will be needed when specific projects located on specific sites are proposed in the future. The potentially significant adverse environmental impacts of the Delta Plan, including WR R3, are fully evaluated in the Recirculated Draft PEIR, as were the impacts of WR R5 in the Draft PEIR (Volumes 1 and 2).

- 3.8 Regional Self Reliance.** The PEIR does not state that projects by others to promote regional self reliance would not occur without the Delta Plan. On the contrary, the PEIR states that the degree of influence of the Delta Plan on moving these other projects forward is “unclear,” but that the Delta Plan may have the effect of encouraging them, which is therefore analyzed in the PEIR. Draft PEIR, p. 2B-2. While some commenters object to Delta Plan policies that they characterize as requiring increased regional water supply self reliance, including water conservation and adoption of urban water management plans, the Delta Reform Act mandates that “[e]ach region that depends on water from the Delta watershed shall improve its regional self reliance through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts.” Water Code § 85021.<sup>4</sup> The Delta Plan complies with this requirement through policy WR P1 (Reduce Reliance on the Delta and Improve Regional Self-Reliance), and recommendations WR R1 through WR R8 encouraging water efficiency, water management, and water supply reliability planning and programs.
- 3.9 Local Land Use Planning.** The Delta Reform Act does not replace local land use planning, but development and associated infrastructure that is both located in the designated areas defined by the statute (i.e., the Delta and Suisun Marsh) and fits the definition of a “covered action” must be carried out in a manner that is consistent with the

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<sup>4</sup> See also Water Code §§ 10608, 10610.2, 10610.4, 10801, 10802, 85001(c), 85004(b), 85020(a), 85020(d), 85020(h), 85021, 85023, 85054, 85300, 85302(d), 85303 and 85304.

Delta Plan in order to protect the resources identified for protection in the coequal goals. Water Code §§ 85022(a). As specified in the Delta Reform Act, the Delta Plan does not retroactively affect previously approved plans, programs, or projects. Water Code §§ 85057.5(b)(6)-(7), 85057.5(c). However, future projects that fit the definition of covered actions must be carried out consistent with the Delta Plan. The Council will continue to work cooperatively with the Delta Counties, as required by the Delta Reform Act's fundamental goals for managing land use in the Delta, including encouraging coordinated planning and cooperation with state and local planning initiatives. Water Code § 85022(d)(4); Final Draft Delta Plan, pp. 188-189. This PEIR fully evaluates the potentially significant adverse environmental impacts of the Delta Plan related to land use.

- 3.10 Local Plans of Flood Protection.** The Delta Reform Act specifically allows local plans of flood protection to be incorporated into the Delta Plan. Water Code § 85307.
- 3.11 Habitat Conservation Plans and Natural Community Conservation Plans.** Please see Appendix D, Subsection 2.3 of the Draft PEIR, which summarizes the Local Regulatory Framework within the Plan area. Subsection 2.3.7 discusses existing HCPs and NCCPs. Subsection 2.3.7.1, in particular, discusses the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan. Existing plans are part of the regulatory setting for the Delta Plan. Subsection 2.3.7.3 of the Draft PEIR discusses conservation plans that are under development. Several policies and recommendations in the draft Delta Plan require restoration of habitat consistent with the text of Delta Plan Appendix H, which is based on the 2011 draft DFW conservation strategy adopted in 2011 (policy ER P2), and protection of opportunities to restore habitat (policy ER P3). Recommendations ER R1 through ER R4 also concern conservation planning. Final Draft Delta Plan, pp. 156-158, 161. The revised Policy G P1 allows for a conservation measure pursuant to a locally developed NCCP or HCP, approved and permitted by the DFW prior to the date of adoption of the Delta Plan, to be deemed consistent with ER P1 through ER P5 if the certification of consistency includes a confirmation statement from the DFW. The PEIR names nine ecosystem restoration projects that would be encouraged by the Delta Plan, and the PEIR evaluates the potential environmental impacts of those projects. Recirculated Draft PEIR, p. 2-10.

Although this is a comment on the Delta Plan and not on the PEIR, policies ER P2 and ER P3 do not call for shifting HCP/NCCP conservation requirements to other locations. Rather, they prioritize habitat restoration in locations that are consistent with the existing habitat types and require consultation with the DFW outside of urban limits. Final Draft Delta Plan, pp. 156-157, Figure 4-5, and Appendix H.

- 3.12 North Delta Water Agency Contract.** With regard to the North Delta Water Agency (NDWA) Contract, this agreement between the State and North Delta Water Agency is part of the existing conditions. If the agreement is modified in the future, the modification could be a covered action if it meets the criteria defining a covered action and is not exempt. See Part 1.2, above.
- 3.13 SB 375.** SB 375 is the Sustainable Communities and Climate Protection Act of 2008, which has the goal of reducing greenhouse gas emissions through integrated metropolitan land use, housing, and transportation planning. The Delta Reform Act expressly exempts sustainable communities strategies and alternative planning strategies that the State Air Resources Board had determined would achieve greenhouse gas reduction targets (prepared pursuant to Government Code section 65080) from the definition of covered action. Water Code § 85057.5(b)(4). Therefore, the Delta Plan does not conflict with

SB 375. In addition, the Delta Reform Act's fundamental goals for managing land use, as carried out in the Delta Plan, concern protecting and improving the quality of the Delta environment, protection of and access to Delta resources taking into account social and economic needs, creating new or improved habitats to further restore and enhance the Delta ecosystem, and improving water quality, none of which conflicts with the goals of SB 375. Water Code § 85022(d)(1)-(4).

**3.14 Section 8 of the Federal Reclamation Act of 1902.** Pursuant to Water Code section 85300(d)(1)(D), the Delta Plan must be consistent with Section 8 of the federal Reclamation Act of 1902. The Delta Plan does not conflict with Section 8 of the Federal Reclamation Act of 1902, which protects the rights of states to administer water rights. See Part 3.7, above, regarding the relationship of the Delta Plan to water rights.

**3.15 Federal Coastal Zone Management Act.** As required by Water Code section 85300(d)(1)(A), the Council shall develop a Delta Plan consistent with the federal Coastal Zone Management Act ("CZMA") "or an equivalent compliance mechanism." Water Code § 85300(d)(1)(A). In addition, if the Council adopts a Delta Plan pursuant to the CZMA, the Council must submit the Delta Plan to the United States Secretary of Commerce for approval. Water Code § 85300(d)(2). Hence, the Delta Plan will be consistent with the federal CZMA. There is no substantial evidence that the Delta Plan will reduce water quality through changes in flows. See also Part 3.4, above, and Master Response 5 regarding flow standards.

**3.16 Cumulative Projects.** The level of detail of the cumulative projects analyzed in the EIR, such as the BDCP, National Marine Fisheries Service Biological Opinion on salmonids and the Yolo Bypass, is consistent with the requirements of CEQA that the discussion of cumulative impacts in an EIR "need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by the standards of practicality and reasonableness" CEQA Guidelines § 15130(b).

#### **4.0 Difference Between The Proposed Project, Existing Conditions, and No Project Alternative.**

**4.1 Existing Conditions.** "The physical environmental conditions . . . as they exist at the time the notice of preparation is published" constitutes the baseline for purposes of determining whether a physical change in the environment is a significant impact. CEQA Guidelines § 15125(a). The existing condition of valued Delta resources is in a state of decline, which is disclosed, described, and accounted for in the PEIR. See Draft PEIR Section 4.3.2 (Ecosystem Water Quality [pp. 4-3 to 4-10]), Draft PEIR Subsection 1.3.1 (pp. 1-5 to 1-9), and the Environmental Setting section for each resources area (see, e.g., Draft PEIR Subsection 3.3.3.2 [Water Quality], pp. 3-10 to 3-12). These conditions are based on historical and current activities in and outside the Delta, which also are discussed in the PEIR, and include exporting water. Draft PEIR, p. 310 and Draft PEIR Subsection 4.3.2.14 (p. 4-7). It is not correct that the PEIR concludes that the existing levels of water exports are sustainable. Rather, the PEIR describes in detail the state of Delta decline caused, in part, by exporting water. The PEIR also discloses that salinity is an existing problem, including salinity due to past pumping for export (Draft PEIR, pp. 3-10, 4-7) and that the Delta is subject to changing conditions, in particular continued degradation (Draft PEIR, pp. 4-3 to 4-20).

**4.2 The Project.** As explained in Part 2, above, the project (the "Revised Project" analyzed in the Recirculated volume of the Draft PEIR), which is the November 2012 Final Draft Delta Plan as modified by the minor revisions described in Section 2 of this Final PEIR and shown in full in Appendices A and B, consists of regulatory "policies," with which

all “covered actions” (as defined in the Delta Reform Act) must be consistent, and “recommendations,” which are intended to urge/encourage other agencies to take actions that further the coequal goals but with which the Council does not have the authority under the Act to require consistency. The Delta Plan also contains “performance measures” to assist in implementing the policies and recommendations, and issues for future evaluation and coordination. The Revised Project recognizes that many programs by other agencies pursuant to other statutes and enactments are either ongoing or have the potential to be implemented, and identifies (or “names”) those towards which continuing progress is encouraged. These are not “existing conditions,” as defined by CEQA, but proposed and ongoing actions by other agencies that would be encouraged by the Delta Plan. Accordingly, they are recognized as having the potential to occur concurrently with Delta Plan implementation.

- 4.3 No Project Alternative.** As required by CEQA, the No Project Alternative consists of “the existing conditions at the time the notice of preparation is published . . . as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.” CEQA Guidelines § 15126.6(e)(2); see also Master Response 3. In this case, the No Project Alternative is similar to existing conditions (not to the project) but also includes reasonably foreseeable continued decline in the conditions of valued Delta resources. The No Project Alternative assumes that ongoing water supply studies would continue, but does not assume any new water supply infrastructure (such as infrastructure associated with the BDCP) in the reasonably foreseeable future. Draft PEIR Subsection 2.3.2.1 (pp. 2A-85 to 2A-86).

## Master Response 2: Approach to Environmental Review of the Delta Plan

### Introduction

This Master Response responds to comments pertaining to how the PEIR analyzes the significant environmental effects (“impacts”) of the Delta Plan. The proposed Delta Plan is the “project” analyzed in this PEIR. Master Response 1 addresses comments on the project description. This Master Response explains what information a PEIR must contain pursuant to CEQA, and how this PEIR complies with the requirements of CEQA. It describes how the PEIR assesses the types of physical actions that may result, either directly or indirectly, from the Delta Plan’s policies and recommendations in order to identify potentially significant environmental impacts and mitigation measures. This Master Response also responds to comments regarding the level of detail of the analysis, the PEIR’s thresholds of significance, the geographic scope of the PEIR, analysis of social and economic impacts, and alternative approaches to analyzing significant environmental effects suggested by commenters. In addition, this Master Response explains why the Delta Stewardship Council (“Council”) must complete environmental review of the Delta Plan prior to approval. It concludes with a brief description of this PEIR’s relationship to the federal National Environmental Policy Act.

The Delta Plan PEIR is the product of more than two years of deliberation and public input. The Council published the Notice of Preparation for the PEIR on December 12, 2010 for a 30-day comment period ending January 11, 2011. The Council held four scoping meetings prior to publishing the Draft PEIR. The Draft PEIR (Volumes 1 and 2), which analyzes the Fifth Staff Draft Delta Plan, was circulated public review and comment for 90 days beginning on November 4, 2011 and ending on February 2, 2012. During the comment period on the Draft PEIR, the Council held seven hearings, including five dedicated

CEQA field hearings, in several different locations throughout the state. In September 2012, the Council gave direction to the staff to revise the draft Delta Plan. In November 2012, the Final Draft Delta Plan was issued and the Recirculated Draft PEIR (Volume 3 of the Draft PEIR), which analyzes the Final Staff Draft Delta Plan, was circulated for review and comment for 45 days beginning on November 30, 2012 and ending on January 14, 2013. During the comment period on the Recirculated Draft PEIR, the Council held a public hearing on January 11, 2013. Agencies, organizations, and members of the public submitted approximately 3,500 written comments on the Draft PEIR and approximately 830 written comments on the Recirculated Draft PEIR, in addition to participating in seven public hearings on both documents. Section 3 of the Final PEIR provides responses to all written and oral comments received during the comment periods on the Draft PEIR and the Recirculated Draft PEIR.

## **2.1 The Delta Plan PEIR is a Program-Level EIR**

CEQA applies to all discretionary projects proposed to be carried out or approved by a public agency, unless the project is exempt. Public Resources Code § 20108(a). Because projects subject to CEQA may range from site-specific physical improvements to program level plans and policies, such as the Delta Plan, the statutory requirements are flexible. Accordingly, the CEQA Guidelines provide that the level of specificity required in an EIR will correspond to the degree of specificity of the activity described in the EIR. CEQA Guidelines § 15146. Thus, an EIR on a plan-level approval “should focus on the secondary effects that can be expected to follow from the adopting . . . but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.” CEQA Guidelines § 15146(b).

The draft Delta Plan is a comprehensive, long-term management plan for the Sacramento-San Joaquin Delta and the Suisun Marsh (collectively, the Delta) that furthers achievement of the coequal goals defined in the Delta Reform Act.<sup>5</sup> Draft PEIR (Vol. 1), p. 1-1 (citing Water Code § 85300); *see also* Water Code §§ 85054 (definition of “coequal goals”), 85059 (definition of “Delta”). The Delta Plan does not propose physical projects. Draft PEIR (Vol. 1), pp. ES-2, 2A-1. Rather, it consists of policies that will become legally enforceable once they are adopted as regulations, and recommendations to other agencies that will further achievement of the statutory coequal goals of: (1) providing a more reliable water supply for California and (2) protecting, restoring, and enhancing the Delta ecosystem in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. Draft PEIR (Vol. 1), pp. ES-1, 2A-1; Water Code §§ 85020, 85054, 85300(a). Because this PEIR evaluates a plan consisting of policies and recommendations that agencies will then use to develop more specific projects, it is a first-tier, programmatic or program-level EIR.

Although the Delta Plan does not propose physical activities that would be undertaken by the Council, the Delta Plan could influence the nature, timing, or other aspects of decisions and actions by other agencies that may have significant effects on the physical environment, for example, by influencing or encouraging other agencies to construct new or modified facilities throughout California. Draft PEIR (Vol. 1), pp. ES-2, ES-7, 1-13. While these future projects might proceed absent the Delta Plan, and will undergo (or, in some cases, have undergone) more specific, project-level environmental review once sufficient information is available regarding their location, size, operations, and permitting agencies, this PEIR analyzes the reasonably foreseeable indirect physical changes in the environment that the Delta Plan may cause. Draft PEIR (Vol. 1), pp. 1-13, 2A-2, 2B-1 to 2B-2.

## **2.2 PEIR Project Description and Analysis of Impacts**

Although a program-level, first-tier EIR will not be as detailed as a site-specific EIR, all EIRs must contain the same general contents, including an analysis of significant environmental effects (“impacts”), identification of feasible mitigation measures, and consideration of alternatives. This PEIR includes all of the content required by CEQA at the level of detail commensurate with the level of detail of the Delta

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<sup>5</sup> Sacramento-San Joaquin Delta Reform Act of 2009, Water Code § 85000 *et seq.* (“Delta Reform Act”).

Plan. The PEIR evaluates the types of physical actions that may result from the policies and recommendations in the Delta Plan, and identifies associated impacts and mitigation measures to reduce these impacts. Draft PEIR (Vol. 1), Table ES-1, pp. ES-10 to ES-57. The PEIR makes the reasonable assumption that agencies will implement the Delta Plan’s mandatory policies, that its advisory recommendations will have some effect on other agencies’ actions, and that the Delta Plan will lead to other agencies taking actions that may have a physical effect on the environment. *See, e.g.*, Draft PEIR (Vol. 1), pp. ES-2 fn.3, 2A-5 to 6, 2A-25 to 26, 2A-40 to 41, 2A-46 to 47, 2A-52 to 53. CEQA provides for such assumptions, which are required to assess future outcomes. Public Resources Code §§ 21080, 21080.2; CEQA Guidelines §§ 15144 (preparing an EIR requires some degree of forecasting), 15126.2(a) (direct and indirect significant effects of the project must be clearly identified and described).

As required by CEQA, this PEIR analyzes the whole of the project—i.e., the Delta Plan—rather than reviewing only parts of the Delta Plan such as the regulatory policies. CEQA Guidelines §§ 15126, 15378 (“‘Project’ means the whole of an action”). A segmented approach might minimize any impacts. It also would not accurately reflect the substantively-intertwined and geographically-overlapping nature of the policies and recommendations. For example, Policy WR P1 is “to reduce reliance on the Delta in meeting future water supply needs and . . . improve . . . regional self-reliance.” Recirculated Draft PEIR (Vol. 3), p. C-3. It mentions “increas[ing] water use efficiency” as one of its key components. It also references as one of its criteria that water suppliers demonstrate compliance with Water Code Division 6, Parts 2.55 (Section 10608 et seq.), 2.6 (Section 10610 et seq.) and 2.8 (Section 10800 et seq.). Recommendation WR R1 mentions these same Water Code sections, in part in order to extend the intent of WR P1 to non-covered actions. Similarly, Recommendation WR R2 states that DWR should require implementation of all required State “water efficiency” and water management laws, goals, and regulations. Recirculated Draft PEIR (Vol. 3), p. C-12. The PEIR, accordingly, looks at the potential physical changes that might result from the *combined* potential outcome of WR P1, WR R2, and WR R3 (and other related policies and recommendations) in terms of physical actions that would increase water use efficiency, the potential environmental impacts of which the PEIR then analyzes. *See* Draft PEIR, pp. 2A-23 to 24; *see, e.g.*, Draft PEIR, pp. 3-81, 3-82, 3-85. In other words, because the Delta Plan policies and recommendations with respect to water use efficiency are so intertwined, the PEIR evaluates resource areas and locations targeted by particular policies and recommendations (and potential resulting physical changes) because that reflects the structure of the Delta Plan. The same holds true across for all of the categories of policies and recommendations that are thematically related. Attempting to evaluate policies separately from recommendations would be nearly impossible, confusing, and misleading in that it would not convey the breadth of the Delta Plan’s intent across substantive policy areas that could lead to physical change.

Using this approach, the PEIR analyzes five categories (or types) of physical projects that the Delta Plan encourages, each of which may lead to significant effects on the environment. These categories are the following: reliable water supply projects, Delta ecosystem restoration projects, water quality improvement projects, flood risk reduction projects, and projects related to protection and enhancement of the Delta as an evolving place. Draft PEIR (Vol. 1), p. 2A-4. The PEIR further differentiates each category of projects into subcategories, and analyzes the types of impacts that such projects are likely to have on the environment. For example, in the impact analysis for water supply reliability projects, the PEIR identifies the following six types or subcategories of projects: surface water projects, groundwater projects, ocean desalination projects, recycled wastewater and stormwater projects, water transfers, and implementation of water use efficiency and conservation programs. Draft PEIR (Vol. 1), pp. 2A-5, 3-77. The PEIR then identifies potential impacts from each of these types or subcategories of projects on every environmental resource analyzed in the PEIR, and identifies mitigation measures to reduce the potentially significant impacts of each type of project. *See, e.g.*, Draft PEIR (Vol. 1), pp. 3-78 to 82, 3-91, 3-93 (analysis of Water Resources impacts). The PEIR applies this same methodology to analyze the Delta Plan’s impacts in 19 environmental resource categories plus the CEQA-required analyses of cumulative impacts and “Other CEQA Considerations.” *See* Draft PEIR Sections 3 to 24. In light of the

programmatic and long-term nature of the Delta Plan, this approach provides the greatest amount of information on the potentially significant environmental effects of the Delta Plan that is reasonable without engaging in speculation about which individual projects will go forward, where they will be located, and when they will be approved. CEQA Guidelines §§ 15145, 15146(b).

The Delta Plan also identifies actions by other agencies that are “known to some degree and . . . named in the Proposed Project.” *See, e.g.*, Draft PEIR (Vol. 1), pp. 2A-5, 2A-25, 2A-40, 2A-46, 2A-52. The Council is not the lead agency for any of these actions (the “named projects”). It cannot cause the named projects to move forward, although it will seek to influence the agencies with jurisdiction over these actions and encourage them to proceed in accordance with the policies and recommendations of the Delta Plan. Because it is impossible to know the effect of any such effort on the decisions of other agencies, this PEIR does not attempt to speculate regarding possible incremental effects that the Delta Plan might have on the final outcome of these named projects. Rather, it assesses the significant environmental impacts that the named projects would have if implemented consistent with the Delta Plan. Draft PEIR (Vol. 1), p. 2B-2. This PEIR thus analyzes the reasonably foreseeable impacts of activities likely to be influenced or encouraged by the Delta Plan, consistent with CEQA’s information disclosure mandate.

Some commenters state that the PEIR should provide additional information regarding the named projects and other projects that are defined and may have undergone environmental review. The PEIR does discuss these projects and the types of resulting impacts that are reasonably foreseeable if the lead agencies approve them as proposed. It also identifies feasible mitigation for these impacts. For example, the PEIR summarizes both the ongoing and planned future expansion of Los Vaqueros Reservoir in the project description for the Delta Plan, including project components currently under consideration for Phase 2 of that project. Draft PEIR (Vol. 1), pp. 2A-14 to 2A-15. The PEIR then considers reasonably foreseeable impacts that could result from Phase 2 in its analysis of impacts associated with the Delta Plan. *See, e.g.*, Draft PEIR (Vol. 1), pp. 3-78, 5-37 to 43, 6-47. The CEQA Guidelines endorse reliance on external documents for specialized analyses and technical data when evaluating a proposed project. *See* CEQA Guidelines §§ 15147, 15148. Ultimately, however, the Council lacks direct authority over these named projects. It thus cannot predict the details of their final approval, configuration, and mitigation to provide more detailed analysis in this PEIR. *See* CEQA Guidelines § 15146. Moreover, the commenters seem to suggest that the Council, which will have no direct approval authority over these projects as either a lead or responsible agency, should be preparing a project-level EIR for these projects on behalf of the agenc(ies) that would propose them. This approach is both unworkable and contrary to CEQA’s structure.

Some commenters propose a “scenario approach” in which the PEIR would develop and analyze a package of possible outcomes that might be representative of the likely effect of the Delta Plan. This would require significant and inappropriate speculation regarding future outcomes, however, which cannot serve as substantial evidence on which to base conclusions regarding the proposed project’s environmental impacts. The Delta Plan covers a large portion of the state, and covers a broad array of project types within five project type categories. Projects encouraged or influenced by the Delta Plan may be as varied as surface storage, conjunctive use of groundwater, desalination, water treatment, habitat restoration, levees, and recreation. The suggested “scenario approach,” therefore, would require the PEIR to speculate on a variety of levels. It would first require selecting a year (e.g., 2020), then it would require predicting, across a large portion of the state and involving the jurisdictions of hundreds of agencies, which specific water supply, habitat restoration, water quality, Delta enhancement, and flood risk reduction projects (i.e., the five category types) might be in place in 2020. The analysis of any one such “scenario” would be nearly as speculative as the analysis of any other scenario, and therefore would be of little to no value.

Other commenters suggested that the PEIR should analyze the “overall” impacts of the Delta Plan, which would involve assuming the completion of *every* project that the Delta Plan encourages. Although the

PEIR assumes that the Delta Plan has the desired effect, it does not purport to identify, or to be able to predict, every individual project that might be encouraged, nor could it provide project-specific and location-specific analyses of the impacts of such projects on the environment. As described above, it would be inappropriately speculative to analyze the effects of specific, future physical projects—much less a statewide, future combination of such projects—in the absence of project-specific information. Instead of engaging in speculation, this PEIR makes a good faith effort to disclose the potentially significant environmental effects of the types of projects that may be encouraged by the Delta Plan and to identify program-level mitigation measures.

For the same reasons, the PEIR's analysis extends to 2030, whereas the Delta Plan has a time horizon that extends to 2100. The Council anticipates that many of the projects envisioned by the Delta Plan will be constructed and operational by 2030; accordingly, the PEIR addresses those projects' reasonably foreseeable impacts. Draft PEIR (Vol. 1), p. 1-14. By contrast, the Council lacks information on which to base conclusions about effects of the Delta Plan more than 20 years into the future and, thus, does not speculate about such impacts in this PEIR. Lending further support to this approach, the Delta Reform Act requires the Council to review the Delta Plan every five years and revise it as the Council deems appropriate. *See* Water Code §85300(c).

There is no basis on which to provide additional, project-specific analyses as suggested by commenters, including quantification of changes in the amount of water supply available from the Delta (Draft PEIR (Vol. 1), p. 3-76); identification of the amount and location of levee repairs (Draft PEIR (Vol. 1), p. 5-35); and prediction of precise changes in acreage of specific land uses, including agriculture and habitat, that may result from projects that are influenced or encouraged by the Delta Plan (Draft PEIR (Vol. 1), p. 7-18). As explained above, this PEIR analyzes the potential significant environmental effects of the five categories of projects that the Delta Plan would encourage. The PEIR cannot determine the significance of impacts at a project-specific level without sufficient project-specific, non-speculative evidence about such projects. More importantly, nothing in CEQA requires an agency completing a program-level EIR on a programmatic plan to provide project-specific analysis of another agency's projects simply because the plan might touch upon those projects conceptually. Instead, future lead agencies will address these impacts in project-level EIRs in the context of applications for specific projects and associated data.

Several commenters state that both the Delta Plan and the PEIR must include quantitative measures of the Plan's effect on the environment. The level of detail of quantification of environmental impacts is addressed in the preceding paragraphs. With regard to comments about whether the Delta Plan complies with Delta Reform Act requirements to include quantified or otherwise measureable targets and performance measures, these are comments on the Delta Plan and not on the adequacy of the PEIR. *See also* Master Response 1.

The analysis of environmental impacts in this PEIR relies on a variety of sources of information. These sources include certified EIRs for other projects that the Council has identified as representative of the types of projects that agencies are likely to pursue under the Plan's framework of policies and recommendations. These sources provide relevant information about the types of impacts that can be expected based on prior analyses of similar projects. *See* Draft PEIR (Vol. 1), pp. 2B-5 to 2B-8, Appendix H. Thus, this PEIR assembles and evaluates information on the likely significant impacts specific to each category of projects that would be influenced or encouraged by the Delta Plan. The certified EIRs cited in this PEIR and the analyses that they provide constitute substantial evidence that supports the PEIR's conclusions regarding the potentially significant impacts of the Delta Plan. The PEIR does not "tier" from these EIRs in the strict sense of CEQA Guidelines section 15152, nor do these other EIRs serve as a substitute for the Delta Plan PEIR as contemplated in CEQA Guidelines section 15153. Rather, these other EIRs provide substantial evidence to support the Delta Plan PEIR's conclusions.

CEQA does not require an EIR to examine the cost of the proposed project or the alternatives, even when such information is available. CEQA Guidelines § 15131. This PEIR does, however, discuss the Finance

Plan Framework portion of the Delta Plan, including the recommendations specific to the Finance Plan regarding development of funding mechanisms by other agencies. Draft PEIR (Vol. 1), pp. 2A-55 to 56. This PEIR describes the key tenets of the Delta Plan related to financing: that beneficiaries of water from the Delta should pay for the benefits they receive, and that those whose actions harm the Delta ecosystem (“stressors”) should pay for that harm. Draft PEIR (Vol. 1), p. 2A-55. However, every Delta Plan recommendation requires authorizations, appropriations, and/or approvals by agencies other than the Council. Thus, even if the PEIR were required to evaluate costs and financing, information on future funding would be highly speculative.

Some commenters state that the PEIR contains too much information, lacks organization, and is difficult to follow, while others find cross-references between sections to be burdensome and request inclusion of the Delta Plan’s regulatory policies in the main body of the PEIR. The policies and recommendations of the Revised Project are reproduced verbatim in Appendix C of the Recirculated Draft PEIR. As noted above, the Delta Plan is a comprehensive, long-range planning document that encompasses much of the state of California in its geographical scope. Accordingly, this PEIR covers a broad range of resources and locations that could experience impacts as a result of the Delta Plan. The PEIR as a whole is voluminous, but it is consistently organized such that it specifies the impacts that the same five categories of physical projects may have on 19 different resources in sections that are formatted in the same manner. The PEIR uses cross-references and appendices to streamline the body of the analysis while directing readers to additional relevant information. *See* CEQA Guidelines § 15147 (“Placement of . . . data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices”). CEQA does not require that an EIR replicate the project being analyzed in the body of the EIR. Accordingly, this approach is both efficient and appropriate.

### **2.3 Thresholds of Significance**

CEQA allows lead agencies discretion to select standards of significance by which to assess the significance of environmental impacts, which may include using standards developed by other agencies, experts, or consultants in the context of a specific EIR. There is no requirement that an EIR use specifically tailored thresholds of significance, however, and many agencies rely on CEQA Guidelines Appendix G to provide widely-accepted thresholds of significance.

This PEIR not only uses the standard thresholds of significance listed in Appendix G but also uses additional thresholds tailored to specific circumstances as needed to ensure that the analysis addresses all reasonably foreseeable impacts of the Delta Plan. For example, Section 14 (Hazards and Hazardous Materials) analyzes impacts from the creation of vector habitat that would pose a significant public health hazard, even though Appendix G does not address these impacts (Draft PEIR (Vol. 1), p. 14-16), and Section 12 (Paleontological Resources) uses a definition of “unique geologic feature” developed by another agency because that term is not defined in Appendix G (Draft PEIR (Vol. 1), p. 12-13). Other sections of the PEIR use Appendix G’s general thresholds, supplemented by similarly tailored thresholds and definitions. *See, e.g.*, Draft PEIR (Vol. 1), p. 4-60. Each section of the PEIR also applies the conservative approach of assuming that impacts will be significant in the face of uncertainty. *See, e.g.*, Draft PEIR (Vol. 1), pp. 6-45 to 46, 8-17.

Because of the programmatic nature of this PEIR and lack of project-level information regarding specific projects that may be influenced or encouraged by the Delta Plan, comparison of impacts to location-specific quantitative thresholds, such as thresholds adopted by individual air basins or specific acreages and types of land that would be used for specific types of habitat, would be inappropriately speculative.

### **2.4 Geographic Scope**

The PEIR study area encompasses the regions in which each alternative could cause impacts. The three study areas used in this PEIR are the Delta (including the Suisun Marsh), the Delta watershed including

areas upstream of the Delta, and areas outside of the Delta that use Delta water. Draft PEIR (Vol. 1), p. 1-14; Recirculated Draft PEIR (Vol. 3), p. 2-3; *see also* Water Code § 85059. Because different impacts are likely to occur in different locations, each section of the PEIR specifies the study area for the impact analyzed. For example, the study area for flood risk consists primarily of the Delta, because the Delta Plan focuses on flood management activities within the Delta pursuant to one of the objectives inherent in the coequal goals: to “reduce risks . . . in the Delta . . . by investments in . . . flood protection.” Water Code § 85020(g); *see also* Draft PEIR Section 5 (Delta Flood Risk). By contrast, the analysis of impacts on Water Resources in Section 3 considers impacts on the Delta; its watershed, including tributaries flowing into the Delta from the Sacramento and San Joaquin River watersheds; and areas outside of the Delta that use Delta water, including the areas of Tulare Lake, San Francisco Bay, the Central Coast, and Southern California. Draft PEIR (Vol. 1), pp. 3-1 to 3-3; Recirculated Draft PEIR (Vol. 3), p. 3-2.<sup>6</sup> Section 3’s broader scope reflects the final Draft Delta Plan’s encouragement of water supply reliability projects in upstream locations. Recirculated Draft PEIR (Vol. 3), p. 3-2. It is also consistent with the coequal goals set forth in Water Code section 85054, which include “providing a more reliable water supply for California.”

## 2.5 Social and Economic Effects

Some commenters state that the PEIR should address social or economic (“socioeconomic”) effects of the Delta Plan, particularly associated with taking agricultural land out of production, either for use as habitat or because of reduced water supply. The CEQA Guidelines direct that “[e]conomic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from a project to physical changes cause in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any greater detail than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.” CEQA Guidelines § 15131(a); *see also* CEQA Guidelines § 15064(e). Thus, the CEQA Guidelines require analysis of socioeconomic effects only to the extent that those effects, in turn, result in reasonably foreseeable physical changes to the environment.

Section 7 (Agriculture and Forestry Resources) of the Draft PEIR recognizes that the Delta Plan could have significant impacts on farmland if it is converted to other uses (*e.g.*, Draft PEIR (Vol. 1), pp. 7-20 to 7-21, 7-30 to 7-31; Recirculated Draft PEIR (Vol. 3), pp. 7-3 to 4, 7-6 to 9) and identifies mitigation measures specific to this impact (Draft PEIR (Vol. 1), pp. 7-53 to 54; Recirculated Draft PEIR (Vol. 3), p. 7-25). The precise magnitude of these impacts is uncertain, however, and will require future site-specific analysis once agencies consider individual projects. Draft PEIR (Vol. 1), p. 7-31; Recirculated Draft PEIR (Vol. 3), p. 7-9. Commenters also state that removal of land from agricultural use would result in socioeconomic changes that, in turn, would cause physical effects on the environment in the form of blight and urban decay, reduced emergency services, or impaired food supply and, thus, impacts on public health. In the absence of information concerning specific proposed projects that would take agricultural land out of production, there is no substantial evidence that these effects would occur, or that if they occur they would be substantial, adverse physical effects that could not be mitigated.

Several commenters state that the Delta Plan will reduce water supplies available to agriculture or result in increased water prices that then accelerates a shift in water from agriculture to urban use. CEQA does not require, and the PEIR does not provide, analysis of economic costs and benefits, including changes in the price of water. For a discussion of the Delta Plan’s impacts on water supplies, please see Master Response 5. As described above, Section 7 of the PEIR analyzes the Delta Plan’s impacts on agriculture.

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<sup>6</sup> The Water Resources study area includes the Trinity River system, because the Clear Creek Tunnel diverts a portion of its flows into Whiskeytown Lake and ultimately the Sacramento River, although the balance of the Trinity River flows into the Klamath River and to the Pacific Ocean. Draft PEIR (vol. 1), p. 3-17.

As noted by several commenters, the Delta Protection Commission completed both its *Economic Sustainability Plan for the Sacramento-San Joaquin Delta* (“Economic Sustainability Plan”) and its *Proposal to Protect, Enhance, and Sustain the Unique Cultural, Historical, Recreational, Agricultural, and Economic Values of the Sacramento-San Joaquin Delta as an Evolving Place* in 2012, after issuance of the Draft PEIR. Recirculated Draft PEIR (Vol. 3), p. 2-13; Final Draft Delta Plan, pp. 178-179. The Final Draft Delta Plan incorporates recommendations from those documents, which are particularly relevant to discussions of socioeconomic effects in the primary zone of the Delta and are discussed in Master Response 1.

## **2.6 Timing of the PEIR**

CEQA and the CEQA Guidelines require the lead agency to analyze actions that have the potential to cause either a direct or a reasonably foreseeable indirect physical change in the environment, including planning actions such as general plans, zoning ordinances, and the Delta Plan, and that it do so at the earliest possible stage in consideration of the project. Pub. Res. Code §§ 21003.1, 21080(a); CEQA Guidelines § 15378(a). Thus, the Council is required to complete environmental review for the Delta Plan prior to approval.

For the reasons explained above, the level of detail of this PEIR is appropriate for the level of specificity of the Delta Plan, and preparation of this PEIR is not premature. In addition, Section 15146 of the CEQA Guidelines is explicit that an EIR for a planning document, such as the Delta Plan, “should focus on the secondary effects that can be expected to follow from the adoption,” and “need not be as detailed as” EIRs addressing specific projects that might follow the approved plan. CEQA Guidelines § 15146(b). Accordingly, this PEIR focuses on the reasonably foreseeable, indirect effects on the Delta, its tributary watersheds, and areas that rely on water from the Delta that are likely to occur due to projects that are influenced or encouraged by the Delta Plan, but it does not speculate regarding the significant adverse project-specific effects on the environment of future projects that the Council will neither construct nor approve. Draft PEIR (Vol. 1), p. 1-14. For currently proposed projects, such as the Yolo Bypass Habitat Restoration Project (Draft PEIR (Vol. 1), p. 2A-25), more information is available and is, accordingly, provided in the PEIR.

While it is possible that environmental review for future projects could be tiered from this PEIR pursuant to one of the tiering provisions of CEQA and the CEQA Guidelines, it is more likely that lead agencies will find new environmental review necessary once they identify specific projects located on specific sites. This approach does not excuse the need for the current PEIR, nor does it result in “piecemealing.” Instead, it comports with CEQA’s mandate that the lead agency assess a project’s impacts on the environment at the earliest possible stage. It is not possible to determine prospectively which future projects, if any, can properly tier from the Delta Plan PEIR and for which analyses. That determination is appropriately made at the time the lead agency defines the project and determines the form of environmental review that is appropriate for a specific proposed project. Likewise, this is not a situation in which future projects constitute phased components of a larger project that includes the Delta Plan. Thus, there is no phasing component of the Delta Plan for this PEIR to address, and so processes like a Staged EIR are not applicable.

## **2.7 Relationship to the National Environmental Policy Act (NEPA)**

This PEIR has been prepared pursuant to CEQA, and does not fulfill all of the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. section 4321 *et seq.* Nevertheless, this PEIR analyzes all of the alternatives at an equal level of detail, which is required by NEPA but is not required by CEQA. *See* Draft PEIR (Vol. 1), p. ES-3; 40 C.F.R. § 1508.12. If the Council submits the Delta Plan to the federal National Oceanic and Atmospheric Administration for certification as a Coastal Zone Management Plan, as provided for in Water Code section 85300(d)(2), the federal lead agency will conduct a NEPA analysis at that time.

# Master Response 3: Alternatives

## Introduction

Many commenters raised concerns about the PEIR's analysis of alternatives to the proposed Delta Plan. This Master Response addresses the most common of these comments by describing the process of developing and selecting the alternatives considered in the PEIR, and then explaining the PEIR's approach to comparing these alternatives to the Final Draft Delta Plan, which is the subject of the PEIR and is called the "Revised Project" in the analysis of alternatives.

The Master Response begins by discussing the Delta Plan's objectives, because these goals guide the development of the alternatives. It then discusses the appropriate range of alternatives to the Delta Plan's complex suite of policies and recommendations, and describes the process by which the PEIR preparers assembled the alternatives using proposals and information from a variety of stakeholders. Importantly this section of the Master Response explains that the PEIR's alternatives are not intended to, and are not obliged to, match precisely the alternatives proposed by any such stakeholders. It also responds to comments raising concerns about the adequacy of the PEIR's description of the alternatives. The Master Response next addresses the PEIR's comparison of each alternative to the Revised Project. The section responds to comments on the adequacy of the description of the alternative's impacts and on the PEIR's determination that the Revised Project is the environmentally superior alternative. Many commenters asserted specifically that Alternative 2 should have designed environmentally superior, so this question is given particular attention. Finally, the Master Response explains how the Delta Stewardship Council will consider the relative ability to meet these objectives of the project and the alternatives, an analysis that was, pursuant to CEQA, not included in the PEIR.

### 3.1 Project Objectives

The project objectives, which are stated in the PEIR as required by CEQA, express the "underlying purpose" of the Proposed Project. CEQA Guidelines § 15124(b). The Delta Reform Act determines the objectives of the Delta Plan, by mandating a plan that furthers achievement of the Act's coequal goals of "providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem," which are to be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." Water Code § 85300; Public Resources Code § 29702.

Eight statutory objectives are "inherent" in these goals, as described in Water Code section 85020. The Delta Plan's objective is to achieve the coequal goals and eight inherent objectives in a manner that: (1) furthers the statewide policy to reduce reliance on the Delta in meeting the State's future water supply needs through regional self-reliance, (2) is consistent with specific statutory content requirements for the Delta Plan [Water Code §§ 85302(c)-(e), and 85303-85308], (3) is implementable in a comprehensive, concurrent and interrelated fashion, and (4) is accomplished as rapidly as realistically possible without jeopardizing ultimate success." *See* Recirculated Draft PEIR, Section 1.1.

In response to comments on the Draft PEIR and on the Delta Plan, the Final Draft Delta Plan contains additional discussion of the content of these goals and objectives. For example, the meaning of the coequal goals is explored on page 68 ("What Does It Mean to Achieve the Goal of Providing a More Reliable Water Supply for California?") and page 120 ("What Does It Mean to Achieve the Goal of Protecting, Restoring, and Enhancing the Delta Ecosystem?") of the Final Draft Delta Plan. Similarly, on pages 213 and 214, the Plan discusses how improving water quality, one of the eight inherent objectives, supports the furtherance of the coequal goals. This new material in the Delta Plan clarified and explained the Project's objectives, but did not make substantive changes.

### 3.2 The Range of Alternatives

CEQA requires every EIR to describe and analyze a “reasonable range” of alternatives that “would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project.” CEQA Guidelines § 15126.6(a). It does not require an EIR to consider any particular number of alternatives, nor does it mandate certain types of alternatives. CEQA also does not require that any particular alternative be analyzed, even if a specific, proposed alternative was submitted for agency consideration.

“The range of alternatives required in an EIR is governed by a ‘rule of reason’ that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice” regarding the proposed project. CEQA Guidelines § 15126.6(f). This range is determined, in part, by the particular scope and purpose of the project under review. The selection of alternatives must also be guided by CEQA’s fundamental goal of environmental protection. *See* Public Resources Code §§ 21000, 21001.

The Delta Plan has dozens of policies and recommendations. The Council could conceivably construct hundreds of alternatives by combining policies and recommendations into various alternate plans placing emphasis on different means of achieving the coequal goals. CEQA, however, does not require the EIR to take such an approach to alternatives, for two reasons. First, the EIR must “focus on alternatives to the project...which are capable of avoiding or substantially lessening any significant effects of the project” CEQA Guidelines § 15126.6(b). Second, CEQA does not require that a lead agency consider alternatives to every feature or aspect of a project. Instead, the agency must consider alternatives to the project as a whole. For example, an EIR analyzing the impacts of a proposed housing development does not need to consider alternatives specifically addressing the grading plan or the location of an access road; it is obliged only to consider alternatives to the entire project. Similarly, here, the Council must consider alternatives to the Revised Project as a whole, but it is not required to consider alternatives to each of the Revised Project’s policies and recommendations.

Council Staff developed the alternatives based on their own judgment, informed by public comment and alternatives submitted by stakeholders. Pursuant to CEQA, Council Staff developed alternatives for inclusion in the PEIR that would meet the project’s fundamental underlying objective- the furtherance of the coequal goals—while reducing or avoiding its significant adverse environmental impacts. These principles are necessary and sufficient under CEQA for the selection of a reasonable range of alternatives. *See* CEQA Guidelines § 15126.6(c). Because the coequal goals require tradeoffs between different environmental impacts, as discussed in Section 25.4 of the Recirculated Draft PEIR, Staff selected for inclusion in the PEIR alternatives that include combinations of policies that emphasized different aspects of the coequal goals. The PEIR does not consider alternatives that Council Staff determined would not advance the coequal goals, would not be feasible, or would not reduce environmental impacts; such alternatives that were initially reviewed but rejected for consideration in the PEIR are discussed in Section 2.3.1.6 of the Draft PEIR, as required by CEQA Guidelines section 15126.6(c). The Council will compare the selected alternatives’ ability to meet the project’s objectives when it considers adoption of the Delta Plan, as discussed further in Part 3.3 below.

Several commenters have stated that an alternative analyzed in the PEIR “misrepresents” or otherwise deviates from an alternative proposed by a member of the public. Council Staff gave close attention to all of the numerous alternatives proposed by the public, and many of the common themes and specifics of those proposals were incorporated into the alternatives listed below. However, as CEQA requires, the Council used its “independent judgment” in preparing the PEIR, including the formation of the reasonable range of alternatives. *See* Public Resources Code § 21082.1(c)(2).

- ◆ Alternative 1A, informed by comments from water users in export areas south of the Delta, emphasizes water supply reliability through a different approach than the Revised Project: it

focuses on exporting more water from the Delta and reduces the degree of encouragement for users to increase efficiency, conservation, and local supplies.

- ◆ Alternative 1B, informed by a proposal from the Agriculture/Urban Coalition, is similar to Alternative 1A except that it changes all policies in the Proposed Project to recommendations and includes additional invasive species management to further the coequal goal of ecosystem enhancement.
- ◆ Alternative 2, was informed by proposals from environmental organizations led by the Environmental Water Caucus, emphasizes ecosystem restoration and flood risk reduction by sharply decreasing water exports from the Delta and encouraging more local water supply projects than would the Revised Project and general floodplain expansion through levee removal.
- ◆ Alternative 3, informed by letters and comments from farmers and other residents and water users in the Delta, emphasizes the protection of Delta agriculture and other water-using activities by reducing water exports and focusing ecosystem restoration away from agricultural lands while focusing flood protection on such lands.
- ◆ The Proposed Project Alternative, which is the Delta Plan as formulated in the Fifth Staff Draft, has the same emphasis as the Revised Project, with differences relating to the geographic coverage of water supply policy and the extent of encouraged levee improvement and park development.
- ◆ The No Project Alternative, which assumes the continuation of existing plans and policies relating to the Delta, with reasonably foreseeable modifications, is required by CEQA.

Some commenters stated that the PEIR's description of alternatives was too general or vague. As with the range of alternatives, there is no precise rule that determines how much detail an EIR must provide in its description of the alternatives. Instead, the level of detail must be commensurate with the nature of the proposed project. CEQA Guidelines § 15126.6(d). The Delta Plan is a broad set of policies, recommendations, and performance measures, and does not include or require any particular construction projects, regulatory mandates, or management actions. It is thus analyzed at a programmatic level, and the alternatives are described at a similar level of detail. *See also* Master Response 2. Likewise the PEIR assumes that policies and recommendations of alternatives would have the desired outcome, as it assumes for the Delta Plan. *See also* Master Response 1.

### **3.3 Comparison of Alternatives**

The comparison between a project and alternatives generally arises in three contexts during the analysis and consideration of a project that is subject to CEQA. In the course of analyzing the Delta Plan, the PEIR compares the Project with the alternatives in two distinct manners: comparing the Project's environmental impacts with those of the alternatives (CEQA Guidelines 15126.6(d) and identifying the environmentally superior alternative (CEQA Guidelines 15126.6(e)(2)). As discussed above, Council staff considered alternatives' ability to meet the Project objectives when selecting the range of alternatives for consideration in the PEIR. CEQA, however, does not require that the EIR directly compare the Project with the alternatives in such terms. Instead, the comparison of the Project's and alternatives' ability to meet objectives is a relevant to the merits of the Project and is therefore a subject for the Delta Stewardship Council to consider when deciding whether to adopt the Delta Plan as proposed.

CEQA does not require for any of these comparisons the type of detailed quantitative analysis of alternatives commenters request, particularly in a program EIR for a high-level plan such as the Delta Plan.

#### **3.3.1 Comparison of Environmental Impacts of Project and Alternatives.**

Some commenters stated that the PEIR's comparison of the alternatives' respective environmental impacts was insufficiently detailed or quantitative, and that the PEIR expressed its conclusions solely in terms of whether each alternative would have impacts greater or lesser than the Revised (and Proposed) Project. The chief purpose of the analysis of alternatives is to identify ways to reduce or avoid the significant environmental impacts of the project as proposed. CEQA Guidelines § 15126.6(b). CEQA requires that the EIR "include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project." CEQA Guidelines § 15126.6(d). Such "meaningful evaluation, analysis, and comparison" does not require quantification of the alternatives' impacts. Expressing the comparison in terms of greater or lesser impacts informs decision makers of the relative environmental tradeoffs of the alternatives in comparison to the project, particularly for a broad and high-level project such as the Delta Plan, which would (if other agencies act per the Delta Plan's recommendation and/or propose covered actions) be implemented by individual projects undertaken by other agencies. When an alternative would have a significant environmental impact that the proposed project would not, the PEIR must discuss that impact, but "in less detail than the significant effects of the project as proposed." CEQA Guidelines § 15126.6(d).

The level of detail that CEQA requires for the analysis of alternatives is determined by the level of detail (or generality) appropriate to the proposed project under review. Here, because the Delta Plan would not require, approve, or propose to construct any particular projects or actions, but only provides a broad set of policies, recommendations, and performance measures, CEQA does not require quantitative analysis of alternatives. In fact, such analysis would require extensive speculation about the types of projects that other agencies may bring forward within the Delta Plan framework, and would therefore be inappropriate for a CEQA document.

### **3.3.2 Determination of the Environmentally Superior Alternative.**

Some commenters stated that the PEIR incorrectly determined that the Proposed Project is environmentally superior. The Recirculated Draft PEIR contains a new comparison of alternatives, and concludes that the Revised Project is the environmentally superior alternative.

Under CEQA, an EIR must designate an environmentally superior alternative based on the comparison of the alternatives' significant environmental impacts. The PEIR's comparison considers such impacts in the context of declining conditions in the Delta. As the Legislature has determined, the "Delta watershed and California's water infrastructure are in crisis." Water Code § 85001(a). The Delta Plan expands on this point:

Tradeoffs and integration define the Delta dilemma: water conveyance facilities that built strong urban and agricultural economies threaten ecosystem health. Water that is beneficial for fish is alive with plankton and organic material, but sources of drinking water are best in as pure a form as possible. The pollutants of upstream urban and agricultural uses cause problems for downstream fish and water diverters alike. The same oceangoing ships that opened the Central Valley to world trade also introduced nonnative species that alter the Delta ecosystem. High water flows that historically improved habitat and a diverse food web come with the threat of lost homes, flooded farmland, and disaster for Delta residents and the California economy.

Final Draft Delta Plan at p. 9. Without the solutions encouraged by the Delta Plan, these problems will not simply continue to exist at their current level, but will get worse over time. (See, e.g., Final Draft Delta Plan at pp. 17-18 ("[T]his steep and lasting dropoff [in fish populations] signaled an ecological crisis. . . . Adding to the complexity of these problems is the increasing volatility of Delta water supplies. . . ."), 71 ("[W]ater deliveries . . . have become increasingly unpredictable."), 140 ("Flow related stressors are likely to increase as population grows and the climate changes."))

In light of these escalating environmental problems, the PEIR determines that the failure to arrest such decline is itself a potentially significant environmental impact. (See Recirculated Draft PEIR at p. 25-16.) If inaction, or insufficient action, allows the Delta ecosystem and/or the state's water supply reliability to continue to deteriorate, then environmental impacts of that deterioration flow from and are attributable to the decision not to take action.

Thus, the key differences between the Revised Project and the alternatives relate to their ability to arrest or reverse ongoing degradation of the Delta's biological resources, flood protection, water resources, and agricultural resources. These conditions will continue to decline without action. Therefore, an alternative that does less to resolve, for example, the Delta's declining ecosystem health or the state's declining water supply reliability, will create more and greater environmental impacts than a project that does not allow this environmental decline to continue.

As described on page 2B-2 of the Draft PEIR and further explained in Master Response 2, the PEIR's analysis of environmental impacts assumes that the Delta Steward Ship Council and other agencies undertaking projects will successfully implement the Delta Plan. Because this assumption applies to both policies and recommendations, the PEIR treats these two types of direction as capable of encouraging subsequent actions that may lead to physical effects on the environment. This approach ensures the public disclosure of the full potential range and magnitude of the Delta Plan's potentially significant environmental impacts and informs decisionmakers of the potential environmental consequences of their decisions.

In determining the environmentally superior alternative, however, the PEIR distinguishes between policies and recommendations, recognizing that non-binding recommendations are less likely to encourage projects than mandatory regulatory policies. Delta Plan recommendations, in this analysis, will be less effective in reversing or arresting declining conditions in the Delta. In keeping with the programmatic approach discussed in Part 3.3.1 above, the PEIR makes this analysis on a broad level, considering the overall effectiveness of the Revised Project and the alternatives, rather than engaging in a policy-by-policy and recommendation-by-recommendation comparison.

Pursuant to these approaches, the PEIR appropriately determines that the Revised Project is the environmentally superior alternative because it has the greatest ability to arrest or reverse the ongoing decline in environmental conditions in the Delta, declining water supply reliability and other environmental factors.

Alternatives 1A and 1B would have fewer short-term impacts related to construction than the Revised Project, because they encourage fewer reliable water supply and ecosystem restoration projects than the Revised Project, but would do less to arrest or reverse the ongoing decline in Delta environmental conditions. Alternative 3 would have fewer impacts related to the conversion of Delta agricultural land, but would do less than the Revised Project to combat ecosystem and water supply reliability decline. The comparison between these alternatives and the Revised Project is described in greater detail in Section 25.5 of the Recirculated Draft PEIR.

Alternative 2 was informed by comments and proposals from a number of environmental groups. Many commenters stated that it, and not the Revised Project, should be designated the environmentally superior alternative. Alternative 2 would have particular types of environmental benefit such as increased ecosystem restoration. It would, however, have greater impacts than the Revised Project in two key areas: water supply reliability and the conversion of agricultural land.

Alternative 2 would reduce the exported amount of Delta water to a maximum of 3 million acre-feet, on average, or about 60 percent of recent average Delta exports. This reduction in the availability of Delta water would be much greater than any reductions under the Revised Project. It would be an across-the-board reduction, unlike Revised Project's reductions tied to the feasibility of local and regional projects or

the potential seasonal reductions of a more-natural flow regime. *See* Master Response 5. This straight cut in Delta water would alter water supply availability to many users, including agricultural and municipal users. This would itself be a potentially significant impact of Alternative 2, as discussed on page 3-99 of the Draft PEIR, whereas the Revised Project would have a less than significant impact related to water supply (Recirculated Draft PEIR at 3-5). These impacts could be reduced by the development of local and regional supplies, as under the Revised Project, but the export reduction under Alternative 2 could be greater than the ability of local and regional supplies to replace. Moreover, the development of such supplies would cause construction-related impacts at a greater magnitude than the Revised Project.

Alternative 2's water supply impacts would not be evenly distributed among users, but would likely fall more heavily on agricultural users than on municipal users. Agricultural areas are generally not located near communities that could produce recycled wastewater or stormwater, and are for the most part too distant from to take advantage of future desalination treatment facilities. For example, agricultural areas in western Fresno County (such as near Los Banos) are more than 50 miles from the Pacific Ocean and large cities such as Fresno. Alternative 2 also would prohibit using Delta water on about 380,000 acres in the San Luis Drainage Area that depend on artificial agricultural drainage to protect crops and downstream water quality, thus further increasing demand for local and regional supplies. Draft PEIR at 7-63. Alternative 2 could thus lead to more periodic fallowing and, potentially, permanent conversion of agricultural lands to other uses, especially in the San Joaquin Valley, than the Revised Project. Such conversion is a significant impact on the environment. *See* CEQA Guidelines, Appendix G § II(e). Extensive fallowing or retirement of land could also lead to significant air quality impacts related to airborne dust.

Alternative 2 would, moreover, add to this potential impact by encouraging the construction of a 2.56 million acre-foot reservoir in the Tulare Lake Basin which would directly convert about 320,000 acres of currently cultivated agricultural lands which are designated by the State as Farmland of Statewide Importance. Draft PEIR at 7-62. This reservoir also could result in impacts to special-status species reliant on these agricultural lands. *See* Draft PEIR at 4-94.

In short, Alternative 2 would do more than the Revised Project toward the reversal of ecosystem decline within the Delta, but would do so at the cost of greater environmental impacts related to water supply reliability and the conversion of agricultural land. No direct, quantified comparison between these impacts is possible, but the PEIR determined that the impacts of Alternative 2 would be greater than those of the Revised Project, and so concluded that the Revised Project is environmentally superior.

### **3.3.3 Evaluation of Project and Alternative's Ability to Meet Objectives.**

Discussion of each alternative's ability to further achievement of the coequal goals and eight inherent objectives is not within the required scope of an EIR. Such a comparison was presented to the Delta Stewardship Council on March 27, 2013 and will be included in the materials presented to the Council when it considers the Delta Plan for adoption.

The PEIR contains substantial information pertinent to the ability of the alternatives to further the coequal goals. To some extent, this is reflected in the analysis of the environmental impacts of the Revised Project and alternatives. For example, the PEIR considers whether the Revised Project and the alternatives would "[s]ubstantially change water supply availability to water users located outside of the Delta that use Delta water." Recirculated Draft PEIR Section 3.4.2. If the Revised Project or an alternative would have an adverse environmental impact related to this standard, then it likely would fail to further the goal of providing a reliable water supply for California. The converse is also true: if the Revised Project or an alternative would not have an adverse effect on or would improve water supply availability, then it likely furthers the coequal goals. Similar reasoning applies to other analyses of environmental impacts in the PEIR, including those related to biological resources, water quality, and agricultural resources.

# Master Response 4: Mitigation

## Introduction

As CEQA requires, the PEIR identifies mitigation measures to reduce or avoid the Delta Plan's significant environmental impacts. Because the Delta Plan encourages other agencies to undertake projects and programs, the PEIR identified mitigation measures that those agencies would adopt and implement. Many comments concerned the adequacy of this structure and of the measures themselves. This master response addresses those comments.

The master response first discusses the PEIR's approach to mitigation, which is based on the Delta Plan, primarily Policy G P1, which makes the adoption of mitigation a requirement for covered actions. Please see Master Response 1 for discussion of the Delta Plan's consistency requirement and the definition of covered action. It then focuses on the role of mitigation in the PEIR's discussion of the Delta Plan's water supply-related impacts, a topic of special concern for many commenters. Next, the master response addresses comments regarding the adequacy of the mitigation measures, explaining that they are described with a level of specificity appropriate to the Delta Plan. The master response explains, again with reference to Policy G P1, that the measures meet the key CEQA requirements of feasibility, effectiveness, and enforceability. Finally, it discusses the PEIR's obligation to analyze the environmental impacts of mitigation measures.

### 4.1 General Approach; Responsibility for Mitigation

The approach to mitigation in the PEIR is consistent with the nature of the Delta Plan. The Delta Plan does not propose, approve, grant entitlements for, or direct any projects, and the Delta Stewardship Council will not undertake any projects itself. Instead, the Delta Plan is a series of policies and recommendations that will further the coequal goals as set out in the Delta Reform Act. "Covered actions," as defined in Water Code section 85057.5(a) and further described in Master Response 1, must be consistent with the Delta Plan. Water Code § 85022. All covered actions will be proposed and undertaken by other agencies, and will be independently subject to CEQA. The agency that undertakes a covered action will, to the extent required by CEQA, be the lead agency for that project and will be responsible under CEQA for identifying, adopting, and enforcing the needed mitigation measures.

At the same time, the agency proposing a covered action is, pursuant to the Delta Reform Act, also responsible for ensuring that the covered action is consistent with the Delta Plan. Water Code § 85022. Under Delta Plan Policy G P1, as clarified and expanded in the Final Draft Delta Plan, such consistency requires that

[c]overed actions not exempt from CEQA must include applicable feasible mitigation measures identified in the Delta Plan's Program EIR (unless the measure(s) are within the exclusive jurisdiction of an agency other than the proposing agency), or substitute mitigation measures that the proposing agency finds are equally or more effective.

As noted at page 2B-3 of the Draft PEIR, the determination of feasibility would be made by the proposing agency in the first instance (based on project-specific information available at that time), as part of its certification of the proposed project's consistency with the Delta Plan. In the event of an appeal to the Delta Stewardship Council under Water Code sections 85225.10-85225.30, this determination would be reviewed as part of the Council's consideration of the project's consistency with the Delta Plan.

Pursuant to Policy G P1, a lead agency fulfilling its responsibility under CEQA will simultaneously ensure that the covered action is consistent with the Delta Plan. This policy, moreover, makes the requirement to adopt mitigation measures legally binding upon the agency proposing the "covered action" project: the Delta Reform Act requires covered actions to be consistent with the Delta Plan, and Delta

Plan requires the adoption of the Draft PEIR’s mitigation measures or the equivalent (as explained below). The responsibility for implementing and monitoring the mitigation, including the obligation to make such mitigation enforceable, is in the jurisdiction and control of the proposing/lead agency, pursuant to both CEQA and the Delta Reform Act. This approach is necessitated and made enforceable by the Delta Reform Act’s structure, through Policy G P1, and the mitigation measures it identifies are appropriate under CEQA.

#### **4.2 Local and Regional Water Supply Projects**

The Delta Plan’s policies and recommendations encourage water users to reduce their reliance on Delta water and to develop local and regional water projects to replace Delta water in their supply plans. If fully implemented, the PEIR concludes, these policies and recommendations would not have a significant adverse impacts on water supply availability. Master Response 5 provides further explanation of the impacts of these policies and recommendations. Some commenters stated the Delta Plan’s approach of encouraging the reduction of reliance on Delta water and the development of local and regional water supplies inappropriately “shifts responsibility for mitigating” water supply impacts “to the water suppliers who will suffer them.” Comment LO209-8 (italics removed). Encouraging the development of local and regional water supplies, however, is not a mitigation measure. It is an inherent part of the Delta Plan, as required by the Delta Reform Act.

Delta Plan Policy WR P1, which is a part of the Revised Project, sets out the requirements that any proposed action to export water from, transfer water through, or use water in the Delta must meet in order to achieve consistency with the Delta Plan. It mandates that all water suppliers receiving water from such an action “contribute to reduced reliance on the Delta and improved regional self-reliance.” The policy then defines what is required for a water supplier to demonstrate that it is “contributing to reduced reliance on the Delta and improved regional self-reliance”: the supplier must have completed an urban or agricultural water management plan consistent with statutory requirements; identified, evaluated, and commenced programs and projects that reduce reliance on the Delta; and included in the water management plan a description of the expected outcome of these measures.

Through this policy, the Delta Plan encourages all water users to shift from using Delta water to developing and using local and regional supplies. Encouraging this shift is one of the Delta Plan’s approaches to furthering the coequal goals of providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem. Furthering the coequal goals requires both pieces of this policy—reducing reliance on Delta water and increasing local and regional supplies—and both are core parts of the Plan, as required by the Delta Reform Act.

#### **4.3 Adequacy of Mitigation Measures**

Commenters stated that the mitigation measures identified in the Delta Plan are inappropriate because they defer the formulation of mitigation, are excessively general, or lack evidence of feasibility.

##### **4.3.1 Specificity of Mitigation Measures**

As discussed above, the Delta Stewardship Council will not undertake or direct any specific projects, and the Delta Plan does not call for the construction of any specific projects. Therefore, mitigation measures identified in the PEIR are necessarily flexible: they will be applied by many different agencies for many different projects. These measures “specify performance standards which would mitigate the significant effect[s] of the project and which may be accomplished in more than one specified way,” as provided under CEQA Guidelines section 15126.4(a)(1)(B). In the absence of specific proposals, it is appropriate for the PEIR to identify criteria and methods that may be used to mitigate impacts for any of the many, as-yet-unidentified projects that the Delta Plan may encourage. Agencies proposing future covered actions (and non-covered actions taken pursuant to Delta Plan recommendations) will have sufficient guidance through these PEIR mitigation measures to adopt them, as tailored to the project-specific

conditions then known, and thus ensure they are effective and consistent with the Delta Plan. *See also* section 4.3.2 below.

For example, Recirculated Draft PEIR Mitigation Measure 18-1 clearly identifies the actions that agencies shall take to reduce or avoid impacts related to the impairment or elimination of recreational facilities and activities (and thus ensure consistency with the Delta Plan). Under this measure, agencies must locate projects away from recreational sites or provide replacement facilities. Additionally under this measure, they must take steps, such as drought resistant planting or the installation of synthetic turf to mitigate the impacts of water conservation measures. And if reservoir operations are altered pursuant to projects or policies encouraged by the Delta Plan, under this measure reservoirs must continue to provide water for recreation while agencies modify access facilities in light of changing water levels. The specifics of implementing these measures cannot be determined now, but agencies' future responsibilities are clear.

#### 4.3.2 Efficacy and Feasibility of Mitigation Measures

The PEIR recognizes that proposed mitigation measures must be feasible (CEQA Guidelines § 15126.4(a)(1)(A)) and accounts for the possibility that some mitigation measures may not be effective or feasible as applied to particular projects. For example, Mitigation Measure 15-1 would reduce or avoid impacts related to the exposure of sensitive receptors to excessive short-term noise. It recognizes, however, several instances in which the measure might not work as proposed: when 24-hour construction is required it may not be feasible to relocate construction activities away from sensitive receptors; or noise barriers may not be adequate when applied to a specific project, its specific construction equipment and sequencing, and the specific receptors at specific distances then present. Recirculated Draft PEIR at 15-17. The PEIR therefore concludes that this impact could be significant in these situations, even with the identified mitigation. *Id.* The PEIR reaches the same conclusion for all impacts identified as potentially significant before mitigation: because mitigation may not be feasible for particular projects, and because implementation of the mitigation would be in the jurisdiction and control of agencies other than the Delta Stewardship Council, the PEIR determines that such impacts remain significant after mitigation in these instances. Given that the identified mitigation likely is feasible and effective in the majority of situations, however, this conclusion may overstate the severity of the impact: it is likely that actual impacts from projects will be less than significant. *See* Section 2B, pgs. 2B-2 to 2B-3 of the Draft PEIR.

The Revised Project accommodates the potential infeasibility and ineffectiveness of mitigation measures by providing flexibility in Policy G P1 for agencies proposing specific projects that are covered actions. It states: "Covered actions not exempt from CEQA must include applicable **feasible** mitigation measures identified in the Delta Plan's Program EIR (unless the measure(s) are within the exclusive jurisdiction of an agency other than the proposing agency), or **substitute mitigation measures that the proposing agency finds are equally or more effective.**" (Emphasis added.) Consistency with the Delta Plan thus requires that a project's impacts are mitigated, using the PEIR's mitigation measures, to the extent required by CEQA, but accommodates situations in which the specific measures identified in the Delta Plan PEIR will not be feasible and/or effective for the particular project under scrutiny. Every agency proposing a project must mitigate that project's environmental impacts relying first on the PEIR's mitigation measures but adjusting as project-specific situations dictate, but no agency is required to adopt infeasible or ineffective measures.

#### 4.3.3 Enforceability of Mitigation Measures

Some commenters say that the Council has no authority to impose mitigation. As explained in Part 4.1 above, the Delta Plan consistency requirement in the Delta Reform Act, however, will make the mitigation measures identified in the PEIR enforceable as to "covered actions." See Master Response 1 for a discussion of the definition and scope of covered actions.

Other commenters state that the mitigation measures identified in the PEIR are inadequate because they are not enforceable or that the text in the Draft PEIR may be read to imply that the adoption of mitigation measures is not mandatory for future lead agencies. Parts 4.1 and 4.3. 2 above explain that the Delta Reform Act and the Delta Plan (as set out in the Revised Project), along with CEQA, make the adoption of the PEIR's mitigation measures mandatory for agencies proposing covered actions – to the extent those measures are feasible and effective as to the specific project, as acknowledged by Policy GP 1 and discussed in Part 4.3.2 above. The Recirculated Draft PEIR reflects this legal structure.

Agencies may take actions at the Delta Plan's encouragement that are not "covered actions" under the Delta Reform Act. Those non-covered actions could have potentially significant impacts before mitigation. Accordingly, the Delta Plan PEIR identifies mitigation for all potential significant environmental impacts (including for non-covered actions) that would minimize or avoid these impacts. Non-covered actions would not be subject to the Delta Plan consistency requirement. The Delta Stewardship Council has no direct, binding authority over the activities of other government agencies that are not "covered actions." Without the consistency requirement the Council cannot make such mitigation measures legally binding as to non-covered actions. Thus, where non-covered actions would have potentially significant impacts before mitigation, the PEIR concludes that those impacts remain significant and unavoidable, even where identified mitigation could, *if* applied by the future lead agency, reduce impacts to a less than significant level. That the Council cannot enforce its identified mitigation as to non-covered actions is not a flaw under CEQA. It is a product of the Delta Reform Act's structure.

#### **4.4 Environmental Impacts of Mitigation Measures**

Some commenters stated that PEIR failed to analyze the environmental impacts that mitigation measures might cause, and that the document was therefore inadequate under CEQA. Many of these comments focused on local and regional water supply projects. Local and regional water supply projects are not mitigation measures, however, but are instead part of the project under review. As Master Response 5 explains, they are directly encouraged by the Delta Plan, and the PEIR thoroughly considers their environmental impacts.

As discussed above, the mitigation measures identified in the PEIR are flexible in order to effectively reduce or avoid the environmental impacts of the wide variety of projects encouraged by the Delta Plan. They are also flexible because the characteristics of the specific sites that will be chosen for each project are difficult to predict at this time. Most of the mitigation measures establish procedures to undertake during the planning or construction of projects, such as the selection of sites and design of facilities to avoid impacts to fish and wildlife habitat (Mitigation Measure 4-3), or creating natural-looking landforms in spoil areas to minimize visual impacts (Mitigation Measure 8-1). These would not cause any impacts other than the impacts of the project to which they are attached. Others require features to be included in the proposed facilities, such as shielding of outdoor lights to reduce glare (Mitigation Measure 8-3), and similarly would not add to the impacts of the associated projects, which the PEIR analyzes. Some measures require additional construction, such as setback levees or bypass channels to reduce flood risk at in-stream construction sites (Mitigation Measure 5-5). These would involve the same types of facilities and the same types of construction considered in the PEIR's analysis of projects under the Delta Plan. The PEIR's analyses thus apply to and adequately disclose the potential impacts of the mitigation measures. To identify the specific form of each measure that a future lead agency might adopt would require inappropriate speculation. Future environmental review of specific projects encouraged by the Delta Plan will evaluate the mitigation measures identified and adopted for those projects.

# Master Response 5: Water Supply

## Introduction

This master response addresses comments concerning the PEIR's analysis of the impacts of the Delta Plan's policies and recommendations related to water supply, in particular Policy WR P1, which would reduce reliance on the Delta and help provide a reliable water supply by placing conditions on covered actions involving the export, transfer, or use of Delta water, and Recommendation ER R1<sup>7</sup>, which would encourage the State Water Resources Control Board to adopt updated flow objectives to advance the coequal goals. After describing WR P1 and ER R1, the master response responds to comments stating that the Delta Plan's approach will not advance the coequal goals or that the PEIR omits a discussion of its ability to do so. It then explains the PEIR's conclusions regarding the impacts of the key Delta Plan policy and recommendation in a number of impact areas: Water Supply and Agricultural Resources, Greenhouse Gas Emissions, Biological Resources, Recreation and Visual Resources, Water Quality, and Groundwater Resources.

### 5.0 Key Delta Plan Policies

The Delta Plan includes many policies and recommendations that may influence the operation of California's water supply systems and the availability of Delta water. Two of these could have particularly direct impacts, and were therefore the focus of many comments: Policy WR P1 and Recommendation ER R1.

Delta Plan Policy WR P1 will be an important step toward encouraging water conservation and the development of local and regional water supplies, where feasible, thereby improving self-reliance as required by the Delta Reform Act. Self-reliance, in turn, would reduce reliance on the Delta and improve water supply reliability. Its direct impact on the availability of Delta water, however, will likely be limited. Under WR P1, a covered action exporting water from, transferring water through or using water in the Delta would be inconsistent with the Delta Plan, and therefore barred, if and only if it has each of the following three attributes:

- (1) One or more water suppliers that would receive water as a result of the export, transfer or use have failed to adequately contribute to reduced reliance on the Delta and improved regional self-reliance;
- (2) That failure has significantly caused the need for the export, transfer or use; and
- (3) The export, transfer or use would have a significant adverse environmental impact in the Delta.

Policy WR P1 would limit the overall availability of Delta water only if a significant number of covered actions were likely to be inconsistent with all three of its factors. In fact, the policy will prevent very few, if any, proposed actions. Instead it will, as the PEIR finds, benefit water availability by encouraging local and regional self-reliance.

This is primarily because water suppliers can avoid inconsistency by "adequately contribut[ing] to reduced reliance on the Delta and improved regional self reliance." To do so, per the policy, each water supplier must have taken three actions:

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<sup>7</sup> Recommendation ER R1 was a part of Policy ER P1 in previous drafts of the Delta Plan. Because the PEIR's consideration of environmental impacts assumes that all of the Delta Plan's policies and recommendations will be implemented, the correct classification of ER R1 as a recommendation does not change the analysis in the PEIR.

- (1) “1) Completed a current urban or agricultural water management plan (Plan) which has been reviewed by DWR for compliance with the applicable requirements of Water Code Division 6, Parts 2.55, 2.6, and 2.8;
- (2) 2) Identified, evaluated, and commenced implementation, consistent with the implementation schedule set forth in the management Plan, of all programs and projects included in the Plan that are locally cost effective and technically feasible that reduce reliance on the Delta; and
- (3) 3) Included in the Plan, commencing in 2015, the expected outcome for measurable reduction in Delta reliance and improvement in regional self-reliance. The expected outcome for measurable reduction in Delta reliance and improvement in regional self-reliance shall be reported in the Plan as the reduction in the amount of water used, or in the percentage of water used, from the Delta watershed. For the purposes of reporting, water efficiency is considered a new source of water supply, consistent with Water Code Section 1011(a).”

Contrary to some comments, these requirements do not impose substantial new burdens on agencies proposing or otherwise receiving water from covered actions. Urban and agricultural water management plans are required by law and will include the identification and evaluation of potential local and regional water supplies. The only requirements added by WR P1 are that the proposing agency must begin implementation of “locally cost effective and technically feasible” projects to reduce reliance on the Delta and that, from 2015 onward, water management plans “include...the expected outcome for measurable reduction in Delta reliance and improvement in regional self-reliance.” These requirements will not create any gap between water supply and demand. If projects to reduce Delta reliance are feasible, then consistency with WR P1 would simply require the agency to begin those projects. Once the water suppliers that will receive water from the covered action have commenced such implementation, then the covered action would be consistent with WR P1 and could go forward. Alternately, if no feasible local projects are available to the proposing agency, then its proposed covered action will not be inconsistent with WR P1 and may go forward. WR P1 would not prevent a covered action in the absence of a feasible replacement, and would not force any agency to undertake projects that are not feasible and locally cost-effective.

Moreover, even if an agency had failed to prepare a water management plan and/or implement a feasible alternate supply, the proposed covered action would only be inconsistent with WR P1 if the failure to do so significantly caused the need for the action and the proposed action would have a significant adverse impact on the Delta. In short, it is likely that WR P1 would prevent very few, if any, covered actions. Instead, it will encourage agencies to move forward with local and regional water supplies projects, thus benefitting the water supply availability and reliability for all users of Delta water.

Delta Plan Recommendation ER R1 recommends that the State Water Resources Control Board (SWRCB) amend the 2006 Bay-Delta Plan to adopt updated flow objectives “that are necessary to advance the coequal goals.” The Delta Plan and the sources it cites (including especially the SWRCB’s 2010 Flow Criteria Report) explains that the flow objectives that best advance the coequal goals will be those that bring about more natural functional flows within and out of the Delta. *See* Delta Plan, pp. 136 to 142, 155, and sources cited therein. The PEIR thus assumes, consistent with CEQA, that its recommendation will be implemented and that the SWRCB will adopt updated objectives that will advance such a flow regime. This assumption is discussed further in Master Response 2. The Delta Plan does not direct, and the PEIR does not assume, any particular set of flow objectives, as only the SWRCB will determine such details. The general assumption of a more natural flow regime is sufficient for the PEIR’s programmatic approach.

The adoption of such objectives by the Board would be conducted based on public input and in a manner that balances water demands and needs among all beneficial uses. These objectives are likely to alter the timing of flows in the Delta, although the specific timing and magnitude of flows depends on the

definition of “natural flow regime” ultimately adopted by the SWRCB. In general, the natural flow regime encouraged by the Delta Plan would involve freshwater flows to, and westwards through, the Delta that peak in the later winter and spring, and lower summer flows than under current conditions.

WR P1 and ER R1 will work in tandem. A more natural flow regime could, as the PEIR acknowledges, reduce the amount of Delta water available at some times of year to users of Delta water both in and outside the Delta. At the same time, WR P1 will promote the development of local and regional water projects, thus reducing the need for Delta water to meet demand and preventing shortages or other impacts due to the flow changes.

Some commenters questioned the application of policies and recommendations encouraging reduced Delta reliance and improved regional self-reliance to water users upstream of the Delta, because these agencies do not import water from the Delta. To the extent that these comments concern the legal authority of the Delta Stewardship Council, they are comments on the project, not the PEIR. In general, Delta Plan policies are mandatory, and will have regulatory effect on state and local agencies proposing to implement covered actions. Recommendations are non-regulatory in nature for both covered and non-covered actions. For non-covered actions, the policies will function as recommendations. Policy WR P1 thus applies, at least as a recommendation, to upstream diversions or other upstream actions, and may apply as a mandatory policy if such actions are covered actions. (The definition of “covered action,” along with the functions of policies and recommendations, are further discussed in Master Response 1.) The PEIR assumes, as explained in Master Response 2, that policies and recommendations would be implemented successfully.

Some commenters state that the PEIR failed to define the more natural flow regime recommended to the SWRCB through ER R1. The Final Draft Delta Plan includes extensive discussion of various components of a flow regime that would contribute to restoring the Delta ecosystem on pages 138 through 141. Ultimately, however, the SWRCB, not the Delta Stewardship Council, will determine the precise flow objectives. The SWRCB evaluation and decision will occur in an open and public manner, and would be anticipated to require extensive review by potentially affected water users throughout California as well as the SWRCB itself. As such, and under the PEIR’s programmatic approach to impact analysis, speculation about the details of SWRCB’s future decision on flow objectives is unnecessary, as well as inappropriate. The qualitative discussion in the Delta Plan and PEIR (Draft PEIR, p. 2A-39) is sufficient. Please refer to Master Response 2 for further explanation of the PEIR’s programmatic approach.

## **5.2 The Efficacy of the Delta Plan’s Water Supply Policies and Recommendations**

Many commenters state that the Delta Plan and PEIR do not demonstrate that the Plan’s recommended natural flow regime will advance the coequal goals. Some commenters also state that other stressors, apart from the present flow regime, affect the Delta ecosystem and therefore should be the subject of Delta Plan policies and recommendations. Others state that because the Delta Plan’s policies and recommendations could reduce the amount of water available to some users, they will not advance the coequal goal of providing a more reliable water supply for California. Regarding the PEIR’s approach to the Delta Plan’s ability to meet the coequal goals, please refer to Master Response 3, which explains that such analysis is not within the scope of the PEIR. The PEIR and the Delta Plan itself, however, discuss the ecosystem benefits of a more natural flow regime, with references to supporting scientific literature. *See* Draft PEIR Section 4; Final Draft Delta Plan at 138-41. Furthermore, the SWRCB’s 2010 Flow Criteria Report, required by Water Code section 85086(c), found that a more natural flow regime would be the best flow objectives for protecting and enhancing Delta fish populations and other public trust resources in the Delta.

The Delta Plan also addresses other stressors in a number of policies and recommendations, including the following:

ER P5 Avoid Introduction of and Habitat Improvements for Invasive Nonnative Species

ER R6 Regulate Angling for Nonnative Sport Fish to Protect Native Fish

ER R7 Prioritize and Implement Actions to Control Nonnative Invasive Species,

ER R8 Manage Hatcheries to Reduce Genetic Risk

WQ R1 Protect Beneficial Uses

WQ R2 Identify Covered Action Impacts

WQ R3 Special Water Quality Protections for the Delta

WQ R8 Completion of Regulatory Processes, Research, and Monitoring for Water Quality Improvement

Some commenters state that the Delta Plan would increase exports of water from the Delta and that the PEIR fails to analyze the environmental impacts of population growth that such exports could induce. None of the Delta Plan's policies or recommendations would encourage increased exports. These comments may have been aimed at the Bay-Delta Conservation Plan, which is not a part of the project reviewed in this PEIR, as explained in Master Response 1.

### **5.3 Analysis of the Environmental Impacts of the Delta Plan's Water Supply Policies and Recommendations**

#### **5.3.1 Impacts Related to Water Supply and Agriculture.**

Many commenters state that the PEIR's analysis of water supply-related impacts is inadequate. The thrust of most such comments is that one or both of WR P1 and ER R1 would reduce water availability such that agencies would be unable to meet demand, including demand for surface water needed for conjunctive use programs.

The PEIR's analysis and conclusion, however, are supported by substantial evidence and by the structure and substance of the Delta Plan. They are, moreover, as detailed as is appropriate for this program-level environmental review. The Delta Stewardship Council cannot direct or predict the specific projects that other agencies will undertake pursuant to the Delta Plan's policies and recommendations, nor can it direct or predict the flow objectives that the SWRCB will adopt and implement. The PEIR's programmatic approach is sufficient for the analysis of the impacts of these projects and programs, all of which will receive environmental review at the project level, as further discussed in Master Response 2.

Section 3 of the PEIR analyzes the impact of Delta Plan policies and recommendations on water supply, including policies and recommendations, like WR P1, focused on furthering the coequal goal of providing a reliable water supply for California. It finds that these policies and recommendations would encourage the development of local and regional supplies and would therefore not have an adverse impact related to a substantial change in water supply availability. It also considers the impacts of Delta Plan policies and recommendations related to protecting, restoring, and maintaining the Delta ecosystem, including recommendation ER R1, which encourages the SWRCB to adopt flow objectives for the Delta and key tributaries.

The PEIR acknowledges that "[s]uch objectives would likely reduce the amount of water available for municipal, agricultural, and industrial water uses within the Delta and outside the Delta." It then explains that this reduction would be limited because the SWRCB would consider and balance all beneficial uses in developing the objectives. Moreover, the local and regional water supply projects encouraged by the Delta Plan would help compensate for this limited reduction. Thus, the PEIR concludes that the flow regime encouraged under the Delta Plan would not substantially change water supply availability and

therefore would not have a significant impact with respect to overall water supply. (Although some regions could be subject to reduced availability and potential fallowing and conversion of agricultural lands, as discussed further below.)

Some commenters state that these, and other conclusions regarding water supply-related impacts, were insufficiently quantitative or otherwise vague. As explained in Master Response 2, the PEIR takes a programmatic approach to the analysis of environmental impacts. The Delta Plan neither directs nor directly permits any action that could have environmental impacts. Instead, it encourages other agencies to take actions to advance the coequal goals. Policy WR P1 encourages agencies that now depend on Delta water to complete water management plans and develop local and regional supplies. The PEIR cannot provide precise details on the approach that each such agency will take. In addition, any such encouraged actions will be subject to CEQA. Similarly, ER R1 encourages the SWRCB to adopt updated flow objectives. It provides strong encouragement that these objectives implement a more natural flow regime, but it does not identify, nor can it direct, the specifics of the objectives. Those details are up to the SWRCB, which is presently formulating them and conducting independent, in-depth environmental review. Therefore, the PEIR's programmatic approach is necessary and appropriate, as further explained in Master Response 2.

Other commenters state that the PEIR's conclusion is inaccurate and that the Delta Plan would, in fact, have significant impacts on water supply. They state that one or both of ER R1 and WR P1 could prevent actions to export, transfer, or use Delta water and would therefore have a significant impact on water supply availability.

Some commenters focused on agricultural users, stating that the Delta Plan would reduce the availability of Delta water and that this reduction would have significant impacts on agricultural resources. Contrary to commenters' statements, however, the PEIR acknowledges that the Delta Plan could lead to long-term fallowing of agricultural lands, which could cause their conversion to other uses and thus have a significant environmental impact.<sup>8</sup> Section 7 of the PEIR considers the Delta Plan's potential to cause the conversion of some agricultural lands. It concludes as follows:

Projects that are encouraged by the Delta Plan, or named in the Delta Plan, could result in reduced water deliveries to areas outside the Delta that receive Delta water. During some drier hydrologic conditions, deliveries to agricultural lands may be reduced. These reduced deliveries could increase fallowing of irrigated lands. Continuous longer term fallowing and changes in agricultural practices resulting from reduced water deliveries could eventually result in the physical conversion of agricultural land to a nonagricultural use.

Draft PEIR at 7-27. The PEIR determines that this impact would be significant and unavoidable. *Id.*; Recirculated Draft PEIR at 7-7.

As to other, non-agricultural (municipal and industrial) users, substantial evidence supports the PEIR's conclusion that water supply impacts would be less than significant.

As to WR P1, commenters state that the policy would prevent some export, transfer, and/or use of Delta water because some agencies do not have access to feasible or cost-effective local or regional water sources. However, as described above, as long as the water supplier proposing such an action had begun implementation of feasible and locally-cost effective projects to reduce Delta reliance, the action would

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<sup>8</sup> A study of past extended dry conditions found that although most lands were temporarily fallowed or converted to dry farm crops, some lands were taken from agricultural production and converted to other uses (D. Villarejo, Impacts of Reduced Water Supplies on Central Valley Agriculture. Institute of Rural Studies. February 1995). The analysis also found that the acreage of agricultural production declined through the duration of the dry period, resulting in continuous longer term fallowing. Therefore, the PEIR concludes that reduced water deliveries could lead to long-term fallowing and conversion.

be consistent with WR P1. If no such projects are available, the covered action would be consistent with the policy.<sup>9</sup>

Commenters similarly state that ER R1 and the more natural flow regime it encourages could limit water availability for various users. Requirements for Delta outflow could limit exports from and water transfers through the Delta, commenters state. Commenters also state that water users upstream of the Delta could experience reductions in water availability because flow objectives would require more instream flow and more freshwater flow to the Delta.

The PEIR correctly concluded that such impacts would be less than significant. As the PEIR acknowledges, a more natural flow regime may result in reduced water availability for some users at some times. However, several factors will minimize these impacts and ensure they are less than significant for all non-agricultural and most agricultural users.

First, in developing the flow objectives, the SWRCB will ensure the reasonable protection of beneficial uses. This protection, in the words of the SWRCB's 2010 Flow Criteria Report, "may entail balancing of competing beneficial uses of water, including municipal and industrial uses, agricultural uses, and other environmental uses." Flow Criteria Report at 3. This balancing will reduce impacts to water users who currently rely on Delta water.

Second, this respect for existing beneficial uses will continue into the implementation phase of the SWRCB's water quality plan. Neither the Delta Plan nor the SWRCB's flow objectives will alter water rights.<sup>10</sup> Following the adoption of its flow objectives, the SWRCB will engage in a further public proceeding to "consider and assign responsibility for implementing measures to achieve the water quality objectives . . . including changes to water rights or other implementation actions." Draft Flow SED at p. 1-1 (SWRCB 2012).<sup>11</sup> The water rights proceeding will include complete environmental review and will, again, balance beneficial uses. *Id.* This public process will ensure that all water users will have an opportunity to be heard regarding their needs, and that related environmental impacts are minimized. (Because water rights underlie SWP and CVP water service contracts, users who rely on these contracts will be equally protected.)

Third, the amount of Delta water available to users in any given year under the SWRCB's updated flow objectives will not necessarily be less than would be available in the same conditions under the present flow regime. Agencies will likely be able to adjust to changes in the timing of peak volumes through storage, conjunctive use, efficiency and pricing mechanisms, or other means. Some of these approaches may have environmental impacts of their own, which are analyzed throughout the PEIR. Taken as a whole, the various programs under the Delta Reform Act, along with responses to other ongoing concerns, including climate change, flood and seismic risks, and the constraints imposed by federal Biological Opinions and other protections for special-status species are likely to contribute to a reoperation of the water systems that rely on the Delta. Such a reoperation will likely provide agencies with means to continue current uses and provide for growth within current planning projections.

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<sup>9</sup> Some commenters also state that WR P1 inappropriately extends the Delta Stewardship Council's authority. These comments relate to the project, not the PEIR.

<sup>10</sup> Water Code §§ 85031(a), 85032(i); Draft Substitute Environmental Document in Support of Potential Changes to the Water Quality Control Plan for the San Francisco Bay-Sacramento/San Joaquin Delta Estuary: San Joaquin River Flows and Southern Delta Water Quality (December 2012) (Draft Flow SED), at p. 1-1. Regarding the relevant conclusions of the Draft Flow SED, please see the response to comment OR18-5.

<sup>11</sup> The Agenda Item 6A for the Council's March 28, 2013, meeting misstated this on page 5, asserting incorrectly that by SWRCB action would not affect water rights. Counsel corrected the error at that meeting.

In short, the statutory protection of water rights<sup>12</sup> and the SWRCB's balancing of beneficial uses will minimize any shortfall in supply caused by the new flow regime. The PEIR, as discussed above, concludes that local and regional supplies will make up for that reduction.

Some commenters state that the PEIR erred in determining that local and regional water supply projects could help avoid impacts related to water supply. The Delta Plan contains a number of policies and recommendations that will encourage the development of local and regional supplies. In addition to WR P1, discussed above, these are:

- WR R1 Implement Water Efficiency and Water Management Planning Laws
- WR R2 Require SWP Contractors to Implement Water Efficiency and Water Management Laws
- WR R3 Compliance with Reasonable and Beneficial Use
- WR R4 Expanded Water Supply Reliability Element
- WR R5 Develop Water Supply Reliability Element Guidelines
- WR R6 Update Water Efficiency Goals
- WR R7 Revise State Grant and Loan Priorities
- WR R8 Demonstrate State Leadership
- WR R13 Complete Surface Water Storage Studies
- WR R14 Identify Near-term Opportunities for Storage, Use, and Water Transfer Projects
- WR R15 Improve Water Transfer Procedures
- WR R18 California Water Plan

As discussed in Master Response 2, for the purposes of analyzing the potentially significant direct and indirect environmental impacts of the Delta Plan, the PEIR assumes that these policies and recommendations would be implemented, and thus encourage the development of the local and regional supplies. As a practical matter, implementation of local and regional supplies is a very likely result of reduced availability of Delta water: if SWRCB action alters water supply availability or timing, it is reasonably foreseeable that public agencies will take action to ensure that demands are met. As the Final Draft Delta Plan explains on pages 98 and 99, the Department of Water Resources has determined that between five and ten million acre feet per year are available to California through existing efficiency and supply technologies and strategies. See DWR, California Water Plan Update 2009. The Delta Plan discusses possible actions extensively and demonstrates their feasibility. In particular, on page 102, the Final Draft Delta Plan describes several "Regional Success Stories" relating to reducing reliance on the Delta. While the particular approaches discussed will not be effective in all regions, as the PEIR acknowledges, all regions have some alternative sources available. In some cases, maintaining sufficient supplies may require significant investment. Such costs are not environmental impacts under CEQA, and thus are not analyzed in the PEIR.

Several commenters state that the PEIR failed to analyze water supply impacts on users of water from the Trinity River. The Delta Plan does not encourage any actions in the Trinity River watershed. The CVP's Trinity River Division (TRD) exports water from the Trinity into the Sacramento River, from which it is

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<sup>12</sup> Some commenters state that Delta Plan recommendation WR R3 is inconsistent with the statutory protection of water rights. This recommendation, however, simply encourages the SWRCB to ensure that water rights applications comply with the existing constitutional principle of reasonable and beneficial use, and to conduct such evaluations consistent with existing statutory provisions, including Water Code sections 85021, 85023, and 85031.

exported through the Delta for use in the CVP. The U.S. Department of the Interior's December 19, 2000, Trinity River Mainstem Record of Decision (Trinity ROD) sets minimum amounts of water to be released from the TRD's dams into the Trinity River. The Department of the Interior has determined in the Trinity ROD that these flow volumes are sufficient to protect fisheries and other resources in the Trinity River and avoid significant environmental impacts. The Trinity ROD protects these flows, and bars any exports that would prevent the provision of sufficient water to the Trinity River. Therefore, the Delta Plan cannot directly or indirectly lead to actions that could cause significant environmental impacts in Trinity River watershed

### **5.3.2 Impacts Related to Greenhouse Gas Emissions**

Some commenters state that a more natural flow regime might reduce or shift timing of hydropower generation at reservoirs upstream of the Delta, which could lead to more use of fossil fuels to generate electricity. A more natural flow regime, however, will not lead to a significant increase in greenhouse gas emissions for several reasons.

First, the reservoir releases needed for hydroelectric generation are made pursuant to water rights, water service contracts, and/or Federal Energy Regulatory Commission licenses with accompanying SWRCB certifications pursuant to section 401 of the Clean Water Act. They are therefore safeguarded at least by the state statutory and procedural protections described in section 5.3.1 above and, in the case of FERC licensure, by the pre-emptive authority of federal law.

Second, if, as the PEIR appropriately assumes, the Delta Plan's recommendations and policies are implemented, current users of Delta water will reduce their reliance on that water, thus reducing the need for electricity to convey Delta water to users outside the Delta. The reduced demand will limit the impact of any reduction in hydroelectric generation.

Third, under a natural flow regime, water will still be released from these reservoirs. Although these releases may be at different times of the year than under present conditions, and more of them may be for instream flow and Delta outflow, rather than for diversion or export, they will still be available for hydroelectric generation. In light of the uncertainty of the specific actions required to implement the future flow objectives, and the PEIR's programmatic approach, quantitative analysis of greenhouse gas emissions related to changes in hydropower supply is neither possible nor required.

Other commenters state that increased GHG emissions could result from various projects encouraged by the Delta Plan, including recycled waste water and stormwater facilities and water transfers (which could require additional electricity for conveyance if the receiving agencies use water from the CVP or SWP). The PEIR acknowledges the potential for such emissions in Section 21, and determines that the impact could be significant and unavoidable.

### **5.3.3 Impacts Related to Recreation and Visual Resources**

Many commenters state that the PEIR fails to consider the impacts of flow changes on recreational opportunities and facilities in reservoirs and rivers, especially those in upstream areas of the Delta watershed. The PEIR acknowledges that projects encouraged by the Delta Plan could "impair, degrade, or eliminate recreational facilities and activities." Recirculated Draft PEIR at 18-4, 18-23. Such impacts include impaired access to boat launches or other boating facilities or venues because of lowered reservoir levels, or reduced opportunities for boating below dams when limited releases lower water levels in rivers.

Under the natural flow regime that the Delta Plan encourages, reservoirs likely would have sufficient water in the summer months to provide at least the present level of recreation. Although the SWRCB will determine the precise parameters of new flow objectives, in general, a natural flow regime would involve more water flowing to and through the Delta in spring and fall, matching natural patterns of snowmelt and

rainfall, respectively. To provide these flows through reservoir releases, upstream reservoirs will be drawn down in spring. They will then be refilling over summer and early fall, storing water for autumn releases. Thus, over the course of the summer recreation season, water levels will rise, likely to a level sufficient to maintain recreational opportunities. There may be some impacts on early summer recreation, before reservoirs have filled to the levels that boaters and other recreationalists prefer. This impact would be generally of the type that the PEIR discusses in connection with reservoirs that store water exported from the Delta: “[c]hanges in Delta export patterns related to quantities or timing of Delta exports can change the volume of water in the local reservoirs, and hereby affect the ability to use the reservoir for boating and other aquatic recreational opportunities.” Recirculated Draft PEIR at 18-3. The natural flow regime, however, would partly make up for this because it would involve much less water released during the summer than current operations, thus extending the recreation season into fall.

River rafting and other boating activities that depend on releases may be shifted to autumn and spring, but will remain available.

Despite the likelihood that impacts would be less than significant, the PEIR concludes that they would be significant and unavoidable (Recirculated Draft PEIR at 18-23), due to the uncertainty of the specific operational changes required to implement the SWRCB's flow objectives, and the variability of recreation needs among all of the facilities that could be affected.

Other commenters state that the PEIR fail to adequately consider the visual impacts of lowered reservoir levels. The PEIR, however, acknowledges that “reoperation of existing surface water supply projects could result in significant fluctuations of water levels, leaving exposed barren land at the reservoir’s edges when the water level is lowered.” (Recirculated Draft PEIR, p. 8-4.) The PEIR concludes that such visual impacts would be significant and unavoidable.

#### **5.3.4 Impacts to Biological Resources**

Impacts to biological resources resulting from water supply and flow changes are addressed in Chapter 4 of the Draft PEIR. Changes to dam operations required for a more natural flow regime could potentially alter water temperatures, or disrupt reservoir releases intended to create specific temperature conditions upon which certain special-status species, such as Chinook salmon and steelhead, rely. Changed flow conditions could also potentially reduce the water availability to wildlife refuges and private agricultural lands, which provide habitat for many species, such as the giant garter snake and many of the waterfowl and other bird species that migrate along the Pacific Flyway. This reduced availability, commenters state, could diminish or degrade habitat. Some commenters state that the PEIR did not adequately analyze these impacts.

The PEIR acknowledges that changes in surface water storage operations like those that may be required under a new flow regime could influence the timing and magnitude of flows and water temperature in downstream water bodies used by special-status species. Draft PEIR, p. 4-64. For many special-status species, flows and temperature are governed by federal biological opinions, which would continue in effect under any new flow regime.<sup>13</sup> Moreover, the SWRCB, as described above, would consider these species’ needs in the balancing that would produce the actual flow objectives. The PEIR nevertheless concludes that such impacts would be significant and unavoidable, because of the uncertainties concerning the projects and programs that the Delta Plan will encourage.

Federal and state wildlife refuges receive water pursuant to federal and state law (Draft PEIR, p. 4-54 through 4-58), and would continue to do so under any new flow regime. Moreover, as explained above, the SWRCB will consider beneficial uses, including agriculture and habitat, in allocating responsibility for achieving the flow objectives. As discussed above, Section 7 of the PEIR recognizes that some

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<sup>13</sup> See, e.g., NMFS, 2009, Biological and Conference Opinion on the Long-Term Operations of the Central Valley Project and the State Water Project (NMFS Opinion); NMFS, 2011, Amendments to the NMFS Opinion.

agricultural areas could experience long-term fallowing and conversion to other uses. If this were to occur on lands that serve as habitat for special-status species, it could have a significant impact on those species. The PEIR discusses this type of impact at page 4-65 of the Draft PEIR. These impacts likely could be mitigated, but the PEIR concludes that these impacts would be significant and unavoidable, again because of the uncertainties in predicting the impacts and mitigation connected with various future projects under taken by other agencies.

### **5.3.5 Impacts to Groundwater**

Some commenters state that a more natural flow regime could cause impacts to groundwater as water users increase their pumping to make up for reduced availability of Delta water. The PEIR explains that the adoption of flow objectives by the SWRCB could lead to increased groundwater use. Recirculated Draft PEIR, p. 3-8. Any such use would be subject to all local groundwater management requirements (Recirculated Draft PEIR, p. 3-8) such as basin adjudications, county ordinances, or local groundwater management plans, as described on page D-18 of Appendix D to the Draft PEIR. As the PEIR acknowledges, not all areas have sufficient groundwater sources to provide local self-reliance. In areas where groundwater resources are insufficient to meet demand, water users would develop other types of local and regional water projects encouraged by the Delta Plan, such as desalination, increased efficiency, or waste water and stormwater recycling. Moreover, the Delta Plan includes several recommendations encouraging the sustainable use of groundwater:

WR R9 Update Bulletin 118, California's Groundwater Plan

WR R10 Implement Groundwater Management Plans in Areas that Receive Water from the Delta Watershed

WR R11 Recover and Manage Critically Overdrafted Groundwater Basins

The PEIR assumes, as discussed in Master Response 2, that these recommendations would be implemented. The PEIR therefore concludes that the Delta Plan would have a less than significant impact on groundwater.

### **5.3.6 Impacts to Water Quality**

Some commenters state that the low summer flows potentially included in a natural flow regime would increase salinity in the Delta, and that this increase could exceed existing salinity objectives and thereby cause an adverse impact to water quality. The PEIR acknowledges that a more natural flow regime could alter salinity and could thus cause impacts to nonnative species and to Delta water users. Draft PEIR, p. 3-84. The PEIR concludes that this impact would be significant and unavoidable.

Some commenters state that under a more natural flow regime, salinity in some parts of the Delta would not meet current objectives. However, a more natural flow regime would necessarily entail the SWRCB's adoption of new objectives. Violations of prior objectives would not constitute an environmental impact.

### **5.3.7 Impacts Related to Flood Risk**

Some commenters state that the PEIR failed to consider whether and how a more natural flow regime could increase flood risks in the Delta. Under current conditions, the U.S. Army Corps of Engineers (USACE) regulates releases from upstream reservoirs to reduce flood potential in the Sacramento and San Joaquin rivers watersheds. The criteria established by the USACE requires that the CVP, the SWP, and all other owners of major reservoirs reduce reservoir storage beginning in the fall months to provide adequate storage capacity for winter storm events. The schedules for releasing water from the reservoirs are developed to prevent downstream flooding.

The establishment of a more natural flow regime would not disrupt the regulation of reservoirs for flood protection. In general, a more natural flow regime would likely involve drawing down reservoirs during the fall, which is consistent with flood control needs. Moreover, the SWRCB has recently completed its draft environmental review document for the first set of flow objectives related to the more natural regime, the Draft Flow SED. In the Draft Flow SED, the SWRCB confirms that the program for implementing the flow objectives would not apply “when such flows would cause flooding or other related public safety concerns.” Draft Flow SED, p. 3-3. Thus, the more natural flow regime encouraged under the Delta Plan would not have any significant impacts related to increased flood risk. For the same reason, a more natural flow regime would not increase levee erosion during times of high flow.

## Responses to Comment Letters on the Draft PEIR

The following pages provide responses to comments in the order listed in Table 3-1.



# FD3 USBR

Comment Source: Bureau of Reclamation

February 2, 2012

## Draft Delta Plan EIR Comments Bureau of Reclamation

Section	Page	Line #	Comment	
1.3.2.3	1-11	18	The referenced federal authorizing statute (PL 108-361) expires September 30, 2014.	FD3-1
2A	2A-5	16-20	We recognize that the Proposed Project does not include a potential Shasta Enlargement, which was included in the CALFED Programmatic Record of Decision and related Final Programmatic EIR/EIS. You may want to state and/or cross-reference Section 2.2.1.2.4 (specifically lines 21 – 40 on page 2A-11 and lines 1 – 7 on page 2A-12) noting that Reclamation is presently studying the feasibility of Shasta Enlargement and that the restrictions for State participation within the California Public Resources Code (Section 5093.542 may be superseded in the future. Alternative plans include the potential to increase storage by an additional 634,000 acre-feet at Shasta Reservoir.	FD3-2
2A	2A-6	33-39	Revise to indicate that DWR is a co-lead agency with Reclamation for the Surface Water Storage Investigations in cooperation with other local entities (e.g., Contra Costa Water Agency, Sites JPA) and cooperating agencies pursuant to NEPA and CEQA.	FD3-3
2A	2A-6	8,9 + 40,41	These sentences are redundant, eliminate one or the other.	FD3-4
2A	2A-10	30-32	In addition to hydroelectric facilities, other renewable energy facilities (i.e., wind, solar) may be integrated with new surface storage and/or related groundwater storage to meet emerging State and Federal requirements for such facilities.	FD3-5
2A	2A-10	22-32	Another bullet could be added to state/address the potential connection between potential new surface storage and groundwater storage facilities for conjunctive operations and uses.	FD3-6
2A	2A-11	24	At the end of the sentence, add: "... in coordination with Reclamation (co-lead agency for the Surface Water Storage Investigations) and in cooperation with other local entities (e.g., Contra Costa Water Agency, Sites JPA) and cooperating agencies pursuant to NEPA and CEQA."	FD3-7
2A	2A-11	33	Replace "Initially, studies were conducted..." with "Ongoing feasibility studies were initiated..."	FD3-8
2A	2A-11	36	Add a statement addressing limited/diminishing State funding from 2008 to the present.	FD3-9
2A	2A-11	37	PL 108-361 was signed in 2004. Federal funding provided by PL 108-361 didn't occur until 2006.	FD3-10
2A	2A-12	1	Delete "projects"	FD3-11
2A	2A-12	5	"in 2006" is confusing when citing a 2002 document. Was the suspension of the study in 2006 or 2002? Suspended in 2006 due to the findings in the 2002 report? If 2006, what was the document that suspended the investigations?	FD3-12
2A	2A-12	8	Replace "programs currently include" with "program currently includes."	FD3-13
2A	2A-12	12	Delete second appearance of "Reclamation" after "...Initial Alternatives Information Reports" because all Plan Formulation Reports were jointly coordinated and published by DWR and Reclamation.	FD3-14
2A	2A-12	13	(1) Replace "projects" with "feasibility investigations" and (2) add "(for the Los Vaqueros Expansion	FD3-15

### Response to comment FD3-1

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### Response to comment FD3-2

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### Response to comment FD3-3

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### Response to comment FD3-4

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### Response to comment FD3-5

The electrical service facilities analysis in the Draft Program EIR considered facilities that could result in the greatest adverse impacts during construction and operations. Because the Proposed Project does not direct the construction of specific projects nor would the projects be implemented under the direct authority of the Council, specific projects are not identified in the Proposed Project, including use of solar panels to serve some electrical loads.

### Response to comment FD3-6

Conjunctive use and other groundwater programs are described under subsection 2.2.1.3.

### Response to comment FD3-7

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### Response to comment FD3-8

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

***Response to comment FD3-9***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

***Response to comment FD3-10***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment FD3-11***

The phrase referred to in this comment on page 2A-12, Line 1, of the Draft Program EIR, is referring to multiple projects, rather than the entire Surface Water Storage Investigation program. Therefore, the sentence was not amended.

***Response to comment FD3-12***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment FD3-13***

Please refer to the response to comment FD3-11.

***Response to comment FD3-14***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

***Response to comment FD3-15***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Section	Page	Line #	Comment	
			Investigation, an Initial Economics Evaluation Report was released instead of a Plan Formulation, which was prepared by DWR, Reclamation, and Contra Costa Water District)".	FD3-15
2A	2A-12	23-29	(1) Replace the first sentence with "Ongoing feasibility studies and environmental review are being completed by DWR, Reclamation, and local and cooperating agencies for these three investigations." (2) Delete the second and third sentences.	FD3-16
2A	2A-12	31	Replace "The North-of-the-Delta Offstream Storage Investigation evaluated the feasibility of" with "The ongoing North-of-the-Delta Offstream Storage Investigation is evaluating the feasibility of alternative plans for"...	FD3-17
2A	2A-15	12-13	Replace "latest report" with "Final EIS/EIR (CCWD, DWR, Reclamation, and Western 2010)".	FD3-18
2A	2A-15	26-28	(1) Delete the sentence because it is redundant with text in lines 11 - 15 in the preceding paragraph above and/or revise it to cite the Final EIS/EIR (2010) instead of the Draft EIS/EIR (2009). (2) Add new sentence: "As the ongoing feasibility study and environmental review progress, it is possible that options for larger expansions, beyond 275,000 acre-feet, may be considered."	FD3-19
2A	2A-15	30	Replace "The purpose of the Upper San Joaquin River Basin Storage Investigation is to evaluate the feasibility of" with "The ongoing Upper San Joaquin River Basin Storage Investigation is evaluating the feasibility of alternative plans for"...	FD3-20
2A	2A-82		Footnote b says BDCP EIR/EIS is expected in 2012. For clarity, the Draft BDCP EIR/EIS is expected in 2012.	FD3-21
2B	2B-6		Example EIS/EIR - Suisun Marsh is now "Final" as of November 2011, and not a Draft as shown. There are many other references to the "Draft" Suisun Marsh EIR/EIS that need to be updated in the Delta Plan EIR.	FD3-22
13.4.3.1.2	13-10	42	The reference to the LVE EIR is inconsistent with the other sections. This section leaves off Reclamation and uses a difference annotation.	FD3-23
13.5	13-19	18	Reference should be consistent with other sections. From the Water Resources Section: "Reclamation (U.S. Bureau of Reclamation) and CCWD (Contra Costa Water District). 2009. <i>Los Vaqueros Reservoir Expansion Project Draft EIS/EIR</i> . February."	FD3-24
18.3.2.2.1	18-7	2	Much recreation use is determined by available local services... Consider adding that to the list.	FD3-25
Table 18-2	18-9		Is the personal water craft numbers statewide or local market area?	FD3-26
18.3.3	18-20	39	"The categories of available recreational activities are the same as within the Delta." Consider deleting this statement and provide some discussion about river recreation. For example, the Delta does not provide whitewater boating.	FD3-27
Table 18-7	18-21		Annual visitation data should be readily available.	FD3-28
Table 18-7	18-22		Ownership/Management of Folsom Lake and Lake Natoma should read "Reclamation/State Parks"	FD3-29
Table 18-7	18-22		Reclamation no longer owns or operates Sugar Pine Reservoir. It is owned by Foresthill PUD.	FD3-30
Table 18-7	18-22		Reclamation no longer operates Sly Park Reservoir. It is owned by El Dorado Irrigation District.	FD3-31
Table 18-8	18-23		New Melones is directly managed by USBR...there is a small concession marina that is operated by Houseboats.com I.L.P...not Pensus Resorts.	FD3-32
18.3.3.2	18-24		The description of river recreation in this section could include a lot more information.	FD3-33
18.3.3.2	24	22	Typo... walking	FD3-34

**Response to comment FD3-16**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment FD3-17**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment FD3-18**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment FD3-19**

The sentences have not been modified because the reports identified in these sentences were used in preparation of the Draft Program EIR.

**Response to comment FD3-20**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment FD3-21**

At the time of publication of the Draft Program EIR, the estimated date of completion of the Final BDCP EIR/EIS was 2012. It is recognized that the Final BDCP EIR/EIS is now estimated to be complete in 2013 or early 2014.

**Response to comment FD3-22**

The Draft Suisun Marsh EIR/EIS was used in the preparation of the Draft Program EIR; therefore, the sentence has not been modified.

**Response to comment FD3-23**

This reference is consistent with the reference referred to in other sections, such as Section 3 of the Draft Program EIR. The reference is for the Draft EIS/EIR for the Los Vaqueros Reservoir Expansion Project, February 2009.

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### ***Response to comment FD3-24***

Please refer to response to comment FD3-23.

### ***Response to comment FD3-25***

The terms “complexity of settings” and “physical resources” on page 18-7, Lines 1-2, of Draft Program EIR, also encompass consideration for available local services, as described in Table 18-1 and Figure 18-3; therefore, the text referred to in this comment has not been amended.

### ***Response to comment FD3-26***

The Personal Water Craft column in Table 18-2 of the Draft Program EIR refers to statewide data. At the time of publication, the data presented were the most recent available data.

### ***Response to comment FD3-27***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### ***Response to comment FD3-28***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### ***Response to comment FD3-29***

In response to this comment, please see text change(s) in Section 5 in this FEIR. Information in Table 18-7 of the Draft Program EIR related to Folsom Lake and Lake Natoma has been amended to include the information from this comment.

### ***Response to comment FD3-30***

In response to this comment, please see text change(s) in Section 5 in this FEIR. Information in Table 18-7 of the Draft Program EIR related to Sugar Pine Reservoir has been amended to include the information from this comment.

### ***Response to comment FD3-31***

In response to this comment, please see text change(s) in Section 5 in this FEIR. Information in Table 18-7 of the Draft Program EIR related to Sly Park Reservoir has been amended to include the information from this comment.

### ***Response to comment FD3-32***

Information in Table 18-8 of the Draft Program EIR related to New Melones Reservoir has been amended to include the information from this comment.

### ***Response to comment FD3-33***

Comment noted. Because the Delta Stewardship Council cannot direct the construction of specific projects nor would the projects be implemented under the direct authority of the Council, it is difficult to identify specific future projects, including their location. Due to this uncertainty and the programmatic nature of the EIR, it is not appropriate to speculate regarding details of future project-specific impacts. Analyses associated with specific projects will provide such project-level details as they become available. *See also* Master Response 2.

### ***Response to comment FD3-34***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Section	Page	Line #	Comment
18.3.3.2	24	25	Is there a discussion about Wild and Scenic Rivers??? The American River is a Section II(a)(ii) designated river
18.3.3.4	25	16	Forestry and Fire Protection? Isn't this Cal Fire?
18.3.4	26	3	Typo...the
18.3.4	26	10	This appears to be a dated source to use for quoting use patterns. There should be a more recent source.
18			General Comment. Is there a section that dealt with the impacts the fluctuating water levels and pulse flows in the river basins create to recreation opportunities and offerings. The source material for use of the Delta by recreationists is limited by a few past studies. Consider some level of effort going into figuring out who is using the Delta now...year 2012 rather than who used it in 1987.
19.3.4	19-16	39	The annotation (CALFED 2000b) is not shown in the References at the back of this section.
21.4.1.1	21-3	30	Delete "have occurred" from end of sentence
21.4.1.1	21-3	32	Change "other" to "others"
21.5.3.1	21-9	21-22	The statement implies that water transfers "would not be expected" to generate GHGs is contradicted by other statements in the document indicating that "more pumping and water transfers (particularly over southern California mountains) ... is energy/GHG intensive". (See pg 21-37 lines 11-12).
21.5.3.1.1	21-12	19	Suggest changing text to read "Evaluation of the potential effects of climate change on the project..."
21.5.3.3.3	21-22	28-30	Reductions in snowmelt or changes in its seasonality wouldn't necessarily mean less groundwater recharge as is stated here. More precipitation occurring as winter rainfall could in fact result in greater groundwater recharge because evapotranspiration would typically be less in the winter than during the spring snowmelt season. Furthermore, the idea that "when streams are flowing full" there would be less groundwater recharge is contradicted by the fact that hydraulic gradients between the stream and aquifer are higher and the cross-sectional area of flow is greater when the volume of flow increases. These conditions would typically result in more not less groundwater recharge. However, a simple and reasonable argument could be made that increased temperatures could result in more overall watershed evapotranspiration resulting in less deep percolation of rainfall and applied irrigation water through the soil into the groundwater system.
21.5.3.4.3	21-25	37-41	The discussion in this section is based on the assumption that there will be increased frequency and amount of rainfall but there is just as much a chance that rainfall will be less. Furthermore reservoirs are operated to maintain adequate storage when the possibility of high inflows exists. Recommend deleting paragraph
21.5.3.6.4	21-33	38-40	I'm not sure what "arranging the length of flood management facilities in the direction of floodplain flows" actually means. Are you talking about building levees?
21.5.5	21-35	6-7	Same as comment for Pg 21-9 lines 21-22 above.
23.3.1	23-6	33	The narrative says "Following implementation of the CVPIA and CALFED programs in 2000..." CVPIA implementation began in 1992, and the CALFED Program began in 1994, as described in the previous paragraph. You may want to add clarifying language linking the 2000 statement to the CALFED ROD (August 28, 2000 CALFED Bay-Delta Program (CALFED) Record of Decision (ROD))
Apix C	C-9	WR R6	RE: Proposed Project - Because none of the Surface Water Storage Investigations will be completed in 2012, the following text needs to be revised: "The Department of Water Resources should complete the Surface Water

FD3-35  
FD3-36  
FD3-37  
FD3-38  
FD3-39  
FD3-40  
FD3-41  
FD3-42  
FD3-43  
FD3-44  
FD3-45  
FD3-46  
FD3-47  
FD3-48  
FD3-49  
FD3-50

**Response to comment FD3-35**

Section 3 of the Draft Program EIR has been amended to describe Wild and Scenic Rivers in the Delta watershed.

**Response to comment FD3-36**

The Department of Forestry and Fire Protection website indicates that either designation is appropriate.

**Response to comment FD3-37**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment FD3-38**

This data source represents the most up to date data that are readily available for the entire Delta.

**Response to comment FD3-39**

The EIR relies upon the most up to date data that are readily available for the entire Delta at the time of drafting. Pages 18-32 and 18-37 of the Draft Program EIR discuss impacts associated with changes in water flow patterns and elevations.

**Response to comment FD3-40**

In response to this comment, please see text change(s) in Section 5 in this FEIR.

**Response to comment FD3-41**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment FD3-42**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment FD3-43**

In response to this comment, please see text change(s) in Section 5 in this FEIR. In addition, please refer to Master Response 5.

### ***Response to comment FD3-44***

Comment noted. However, the sentence referred to in this comment on page 21-12, Line 19, has not been amended, since an evaluation will address both effects and potential effects.

### ***Response to comment FD3-45***

The climate change assumptions for the Draft Program EIR assume that the total amount of precipitation would remain the same in the future; however, there would be less snow and more rain. These assumptions support a conservative approach to climate change that has been used in other studies by the U.S. Environmental Protection Agency, U.S. Geological Survey, and Reclamation. The assumed change in precipitation patterns would result in large amounts of runoff occurring in the winter and early spring when the ground is saturated and groundwater recharge would be diminished. Under Existing Condition, runoff is captured in the reservoirs in the winter and early spring when the ground is saturated; and released in the late spring and summer when the groundwater levels have declined and recharge can occur. Under future conditions, not only will the high stream flows occur when the ground is saturated, but there will be less water from a reduced snowpack to refill the reservoirs as the irrigation season starts in the spring. Therefore, there will be less water released in the summer months and less water for irrigation when groundwater recharge currently occurs both from the streambeds and irrigated fields. See also Master Response 5.

### ***Response to comment FD3-46***

See response to Comment FD3-45.

### ***Response to comment FD3-47***

As described in Section 2A, the Proposed Project would expand the floodplain by relocating or removing levees throughout the Delta, including those protecting subsided islands. In some cases, the relocated levees could be replaced by setback levees. The floodplain paths described in the impact would provide floodplain paths across islands currently protected by existing levees in some instances.

### ***Response to comment FD3-48***

Please refer to the response to comment FD3-43.

### ***Response to comment FD3-49***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### ***Response to comment FD3-50***

The text referred to in this comment on page C-9, WR R6, of the Draft Program EIR (and WR R13 of the RDEIR), refers to the recommendations included in the Fifth Staff Draft Delta Plan. Therefore, the comment is on the Delta Plan, rather than the EIR, and no resulting changes have been made to the text of the EIR.

Section	Page	Line #	Comment	
			Storage Investigations of proposed off-stream surface storage projects by December 31, 2012, including...". At this time, we do not expect the investigations' final feasibility reports and environmental documentation to be completed before 2014. Each of the investigations is taking place in an environment of changing regulatory requirements and associated operational challenges, considerations about climate change, and hydrologic challenges inherent in California water. Regulatory requirements include (1) existing biological opinions that are under litigation and subject to court orders including a requirement to conduct National Environmental Policy Act analysis and (2) the need for a new integrated FWS/NMFS biological opinion.	FD3-50
Apdx C	C-29	WR R7	RE: Alternative 1A - Similar comment as above: Because none of the Surface Water Storage Investigations will be completed in 2012, the following text needs to be revised: "The Department of Water Resources should complete the Surface Water Storage Investigations of proposed off-stream surface storage projects by December 31, 2012, including...". At this time, we do not expect the investigations' final feasibility reports and environmental documentation to be completed before 2014. Each of the investigations is taking place in an environment of changing regulatory requirements and associated operational challenges, considerations about climate change, and hydrologic challenges inherent in California water. Regulatory requirements include (1) existing biological opinions that are under litigation and subject to court orders including a requirement to conduct National Environmental Policy Act analysis and (2) the need for a new integrated FWS/NMFS biological opinion.	FD3-51
Apdx C	C-50	WR R6	RE: Alternative 1B - Similar comment as above: Because none of the Surface Water Storage Investigations will be completed in 2012, the following text needs to be revised: "Recommend that Department of Water Resources complete its pending storage investigations by December 31, 2012. Studies should include analyses of the potential additional benefits of integrating operations of new storage with proposed Delta conveyance improvements." At this time, we do not expect the investigations' final feasibility reports and environmental documentation to be completed before 2014. Each of the investigations is taking place in an environment of changing regulatory requirements and associated operational challenges, considerations about climate change, and hydrologic challenges inherent in California water. Regulatory requirements include (1) existing biological opinions that are under litigation and subject to court orders including a requirement to conduct National Environmental Policy Act analysis and (2) the need for a new integrated FWS/NMFS biological opinion.	FD3-52
Apdx C	C-97	WR R5	RE: Alternative 3: Ditto above comments.	FD3-53
App D	D-10	109	Header to this paragraph says "1.1.6 Implementation of the CALFED Bay-Delta Implementation Act". The paragraph then goes on to discuss the CALFED ROD, which is not an "Act". Did the header mean to say "Implementation of the CALFED Bay-Delta Program (CALFED) Record of Decision (ROD)"?	FD3-54
App F	F-4-22	39	Reference (Reclamation 2008, p. 7-28) is not shown in the References section at the back of the Appendix.	FD3-55

**Response to comment FD3-51**

For the reasons set forth in response to comment FD3-50, no changes have been made to the text of the EIR.

**Response to comment FD3-52**

The text on page C-50, WR R6 of Alternative 1B, of the Draft Program EIR, is consistent with the recommendations included in "Draft Alternate Delta Plan - Ag-Urban II Coalition Alternate Delta Plan" submitted by the Association of California Water Agencies in a comment letter to the Delta Stewardship Council dated June 10, 2011. Therefore, and for the reasons set forth in response to comment FD3-50, no changes have been made in response to this comment.

**Response to comment FD3-53**

For the reasons set forth in response to comment FD3-50, no changes have been made to the text of the EIR.

**Response to comment FD3-54**

In response to this comment, please see text change(s) in Section 5 in this FEIR.

**Response to comment FD3-55**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

# TR3 Hoopa Valley Tribal Council

## Response to comment TR3-1

Comment noted.



### Hoopa Valley Tribal Council

P.O. Box 1348 • Hoopa, California 95546  
PH: (530) 625-4211 • Fax: (530) 625-4594  
website: [www.hoopa-nsn.gov](http://www.hoopa-nsn.gov)



January 31, 2012

Via E-Mail to [aircomments@deltacouncil.ca.gov](mailto:aircomments@deltacouncil.ca.gov)

Joe Grindstaff, Executive Officer  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

Re: Comments on Draft Environmental Impact Report

Dear Mr. Grindstaff:

These are the comments of the Hoopa Valley Indian Tribe on the Delta Stewardship Council's draft EIR. Since time immemorial, the fishery resources of the Klamath and Trinity Rivers have been the mainstay of the life and culture of the Hoopa Valley Tribe. The fishery was "not much less necessary to the existence of the Indians than the atmosphere they breathed." *Blake v. Arnett*, 663 F.2d 906, 909 (9th Cir. 1981) (quoting *United States v. Winans*, 198 U.S. 371, 381 (1905)). The salmon fishery is integral to the customs, religion, culture, and economy of the Hoopa Valley Tribe and its members. The lower twelve miles of the Trinity River and a stretch of the Klamath River flow through the Hoopa Valley Reservation.

The federal government established the Hoopa Valley Reservation in 1864. The Hoopa Valley Reservation is located in the heart of the Tribe's aboriginal lands, lands the Tribe has occupied since time immemorial. The Hoopa Valley Tribe has fishing and water rights in the Klamath River Basin with a priority date of 1864, as recognized by the United States in the Memorandum from Solicitor of the Department of the Interior to the Secretary of the Interior (Oct. 4, 1993); and the Memorandum from Regional Solicitor, Pacific Southwest Region to the Regional Director, Bureau of Reclamation, Mid-Pacific Region (July 25, 1995) (collectively, "Solicitors' Opinions"); and by federal courts in, for example, *Parravano v. Babbitt*, 70 F.3d 539 (9th Cir. 1995). Congress has recognized and confirmed, in the Central Valley Project Improvement Act, Public Law 102-575, Section 3406(b)(23) (Oct. 30, 1992), that the United States has a federal trust responsibility to restore and maintain the fishery trust resources of the Hoopa Valley Tribe to specified standards. Those standards are recognized in federal law and have become a legal mandate. The Hoopa Valley Tribe's rights are unique.

TR3-1

The fish and water resources of the Trinity River have been severely and adversely affected by the federal authorization, construction, and operation of the Central Valley Project. The dewatering of the Trinity River to export water to the CVP, despite the mandate of the Trinity River Division Act, Act of August 12, 1955, ch. 872, 69 Stat. 719, radically reduced the productivity of our fishery and contributed to the listing of the Southern Oregon/Northern California coast (SONCC) coho salmon and its critical habitat under the Endangered Species Act. The Record of Decision for Trinity River Mainstem Fishery Restoration (December 19, 2000), upheld in *Westlands Water District v. Hoopa Valley Tribe*, 376 F.3d 853 (9<sup>th</sup> Cir. 2004), reaffirmed the priority for water to be retained in the Trinity River, and placed additional limits on exporting water to the CVP.

TR3-1

At Section 3.3.4.1.1 the DEIR recites that since 1964 a portion of the flow from the Trinity River Basin has been exported. However, the asserted average of about 732,400 acre-feet is incorrect. That was the average in 1985-97. See Trinity ROD at 20. However, under the ROD the "long-term average water exports to the Central Valley would be 630,000 acre-feet." *Id.* Please use the more up-to-date figure.

TR3-2

Section 4-1 of the DEIR describes the Study Area, which includes the Trinity River. However, there is no discussion regarding Trinity River Basin water obligations in either Existing Conditions or Other Alternatives. Since the Trinity is a source of water for the Delta, impacts to the Trinity from alternatives that would retain existing Delta pumping (or increase Delta pumping) should be discussed.

TR3-3

As noted above, the Trinity River ROD of December 19, 2000 establishes a priority for in-Basin Trinity water flows for fisheries purposes. In addition, the Trinity River Division is obligated by the Act of August 12, 1955, 69 Stat. 719, to release annually not less than 50,000 acre-feet of water and make it available to Humboldt County and downstream water users, including the Hoopa Valley Tribe. The Bureau of Reclamation's failure to release that water has artificially augmented exports to the CVP and the Delta. The DEIR should discuss the likelihood that increasing water releases to the Trinity River, as required by law, will reduce inflow to the Delta. The Hoopa Valley Tribe and Humboldt County sent the attached letter to Secretary Salazar and Governor Brown on January 28, 2011, pointing out this omission, but no response has been forthcoming. It is unlawful to commit the 50,000 acre-feet obligated to the Trinity River Basin to the Central Valley or the Delta for any purposes, so the DEIR should not rely upon continuation of this practice.

TR3-4

Coho salmon of the Trinity River are a threatened species under federal and state law, but they are not mentioned in the document. This is another significant omission that should be corrected.

TR3-5

Trinity River temperature objectives to protect salmon and steelhead have been adopted by the North Coast Regional Water Quality Board and the State Water Resources Control Board. Temperature objectives are also set forth in the Trinity River ROD of December 19, 2000. The DEIR should discuss the requirement of compliance with Trinity River temperature objectives and affirm the requirement to maintain an adequate supply of cold water in Trinity Reservoir to preserve and propagate salmon and steelhead in the Trinity River.

TR3-6

### ***Response to comment TR3-2***

In response to this comment, the last sentence on page 3-17, lines 10 and 11, of the Draft Program EIR has been deleted; see Section 5, Revisions to the Draft Program EIR, of this FEIR. Please also see response to Comment TR3-3 below.

### ***Response to comment TR3-3***

In response to this comment, please see text change(s) in Section 5 in this FEIR. Please also see Master Response 5.

### ***Response to comment TR3-4***

The proposed Delta Plan will not impact Trinity River flows, including the potential for an additional 50,000 acre-feet to be made available within the Trinity River basin identified in the 1955 Act referenced in your comment.

### ***Response to comment TR3-5***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### ***Response to comment TR3-6***

Please refer to the response to comment TR3-3.

Joe Grindstaff  
January 31, 2012  
Page 3

Thank you for the opportunity to comment.

} TR3-7

Sincerely,

HOOPA VALLEY TRIBAL COUNCIL



Byron Nelson, Jr., Vice Chairman

*Response to comment TR3-7*

Comment noted.

**Hoop Valley Tribal Council**

Hoop Valley Tribe  
P.O. Box 1348 • Hoopa, California 95548 • Phone (939) 457-2111 • Fax (939) 425-4544



BOARD OF SUPERVISORS  
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January 28, 2011

The Honorable Ken Salazar  
Secretary  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

The Honorable Jerry Brown  
Governor  
State Capitol  
1st Fl.  
Sacramento, CA 95814

RE: Interim Federal Action Plan Status Update for the California Bay-Delta: 2011 and Beyond

Dear Secretary Salazar and Governor-Elect Brown:

We are writing to express our concern about the present course of the Bay Delta Conservation Plan planning process. We recognize that in addressing the Bay Delta crisis the State and Federal governments are undertaking a mission of vital importance to the State and the Nation, but the resolution of that crisis should not come at the expense of the rights of the Hoopa Valley Tribe (Tribe) or Humboldt County (County).

The referenced Federal agency status update<sup>1</sup> (Update) about the Bay-Delta planning process published December 15, 2010, states that the Bay Delta's ecology, water infrastructure, and water management practices are "unsustainable" and have "reached a dangerous tipping point." Update at 2. However, to address this situation, the Update describes planning assumptions and proposed actions that are in conflict with long-established rights under Federal and State law regarding limitations on exportation of Trinity River water to the Central Valley. In addition, Federal officials and water contractors, as well as those public and private entities in California to whom Trinity River origin water may be transferred, are not meeting their statutory obligations to the Tribe, the County and the federal taxpayer. The following are specific comments on the Update about which we respectfully request your attention.

<sup>1</sup> <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=104334>

*No comments*

- n/a -

First, the Update announces that there have been “great strides to identify a science-based solution that calls for the separation of water needed to sustain the Bay-Delta itself from water conveyed to south-of-Delta farms and cities.” Update at 3. Then the Update states, with emphasis added:

The good news is that preliminary modeling results summarized in the State’s BDCP Highlights suggest that a new facility can be operated in a manner that would generate average annual water exports over the long term that are more reliable and greater, than the average annual exports that would be achievable under current constraints. For context, this modeling also suggests that these quantities may be comparable to the average annual Delta exports that have occurred since the Bay-Delta Accord, 15 years ago.

However, the Bay-Delta Accord predates the 2000 Trinity River Restoration Record of Decision (ROD), which diminishes Trinity River Division diversions by an annual average of 250,000 acre-feet. Moreover, neither the Bay-Delta Accord nor present CVP operations accounts for the 50,000 acre-feet of additional releases required by the Trinity Division Act of August 12, 1955, 69 Stat. 719.<sup>2</sup> Thus, there are 300,000 acre-feet of CVP yield included in the Bay Delta Accord that will not be available for use in the new Plan.

We request that the model be reviewed in consultation with us and revised as necessary to ensure that the following volumes of Trinity River water developed by the Central Valley Project’s (CVP) Trinity River Division are excluded from the water supplies on which the above mentioned modeling results are based:

1) Annual flow releases from Trinity River Division facilities, both as to volume and timing, provided for in the Trinity River Mainstem Fishery Restoration Record of Decision (ROD) December 2000;

2) In addition to and apart from the ROD flow releases, annual, scheduled releases from the Trinity River Division of not less than 50,000 acre-feet to be made available to the County of Humboldt and downstream water users, including the Tribe, as provided by: section 2 of the Trinity River Division; 1959 State Water permits for the Trinity Division; and the June 19, 1959 contract between the Bureau of Reclamation and the County.

<sup>2</sup> This was confirmed by a personal communication on December 29, 2010, in which the Bureau of Reclamation’s Bay-Delta Conservation Program Manager advised Hoopa Fisheries’ Senior Hydrologist that the Humboldt County 50,000 acre-feet was not assumed to be a release requirement at Lewiston Dam of the CVP’s Trinity River Division. See also References to the Trinity River do not include the 50,000 acre-feet in Table B-1 “CALSIM II Inputs” at [http://www.baydeltaconservationplan.com/Libraries/Background\\_Documents/Appendix\\_B\\_Hydro\\_Model\\_Inputs.sf1b.asxix](http://www.baydeltaconservationplan.com/Libraries/Background_Documents/Appendix_B_Hydro_Model_Inputs.sf1b.asxix)

*No comments*

- n/a -

3) Reservation of sufficient storage in Trinity River Division facilities to ensure the maintenance of water temperatures required for the restoration, preservation and propagation of the Trinity River fishery.

Second, implementation of a Bay-Delta Conservation Plan will come at considerable cost. The Update at page 13 states, with emphasis added:

Current estimates place the costs of the new north Delta diversion and conveyance facility in the neighborhood of \$13 billion. The proposed plan would call for State and Federal water contractors to pay those costs. The State currently anticipates that the State and Federal governments would pay for certain elements of the habitat restoration program, for which the costs are currently estimated to be about \$3.3 billion. The Federal government must review the components of any proposed plan and understand the costs and benefits such a plan would have on Federal water resources in California and on Federal taxpayers.

We understand that the Plan's costs include those for conservation measures, including construction, operation, administration, and research.

In order for all levels of government to "understand the benefits and costs" of a Bay-Delta Plan, they need to know what financial obligations contractors already have. For that reason, we request that you ensure that any benefit-cost analysis fully account for, preserve, and enforce the contractors' statutorily required financial obligation for environmental restoration associated with construction and operation of the Trinity River Division. Of particular concern to the Tribe and the County are the costs of Trinity River restoration activities. In 2007, the Secretary of the Interior, in consultation with the Tribe, determined that the annual cost of Trinity River restoration will be \$16.4 million through construction and \$11 million annually thereafter for so long as diversions of Trinity River water occur.

Since 1992, Federal law has required CVP contractors to pay for Trinity River fishery restoration as a cost of service for and condition of delivery of CVP water to them. See Central Valley Project Improvement Act (CVPIA), Public Law 102-575 at §§3404(c) and 3406(b)(23). To date, however, no interim or new CVP contract includes a provision that binds the contractors to accept their obligation to pay for Trinity River restoration. CVP water and power contractors have taken the position that they have no further cost obligations for Trinity River restoration. See Central Valley Project Improvement Act Section 3406 Assessment prepared by CVP Water and Power Contractors at 11 (December 2005). There the contractors refer to a 1998 Solicitor's opinion which they admit "clearly states that Section 3406(b)(23) [Trinity River restoration] should be funded from O&M appropriations of the CVP." However, the Bureau of Reclamation's present rate setting policy document does not implement the operation and maintenance (O&M) cost mandates for Trinity River restoration. See Irrigation Ratesetting Document, Central Valley Project, California,

*No comments*

- n/a -

Description of the Component with Individual Contractor Deficits Ratesetting Method, 1988.<sup>3</sup> Mid-Pacific Region staff report that this document is the current version; it has not been amended since 1988.

Under the present form of the Irrigation Ratesetting Document, the O&M component of the cost-of-service rates for CVP water consists only of the following: water marketing, storage and conveyance. There is recent evidence that the Bureau of Reclamation is not charging Trinity River Restoration costs as a cost of service to contractors. The Bureau of Reclamation's repayment contract with the Friant Unit's Arvin-Edison Water Storage District provides that the O&M component of the cost-of-service rates for CVP water consists only of the following: water marketing, storage and conveyance. By not making Trinity River restoration a fixed, annual cost of service component, the Bureau of Reclamation treats Trinity River fishery restoration as just one of a number of CVP activities, without regard to the trust responsibility to the Tribe in section 3406(b)(23) of the CVPIA or the conditions on diversions of Trinity River water in the 1955 Trinity Division authorization. If the CVPIA is to be implemented as Congress intended and as the CVP contractors concede is required, the Bureau of Reclamation should revise its Ratesetting Document write its water service and repayment contracts to conform to the requirements of the CVPIA.

In summary, the Bureau's actions in the operation of the Trinity River Division and implementation of the CVPIA have not been in compliance the 2000 ROD that was signed by the Tribe and the Secretary, or the CVPIA. The result has been subordination of Trinity River fishery restoration to other CVP program interests, chronic underfunding of the program, and failure to implement restoration program prescriptions for fishery restoration. In addition the Bureau of Reclamation has not complied with the right established in the 1955 Act to 50,000 acre-feet of the Trinity Division's yield for the benefit of the County and downstream users. That right is memorialized in 1959 State Water Board permits for the Trinity Division and the 1959 contract for CVP water between the Bureau of Reclamation and the County. In addition, the Department of the Interior may have shifted a substantial portion of the cost of Trinity River restoration from CVP contractors to other Federal program budgets whose expenditures may not be reimbursable.

We request an opportunity to address these matters with you at your earliest convenience and ask that no further planning for the Bay-Delta occur that assumes the availability of Trinity River water resources that are committed by law to the Trinity River Basin and its communities.

Sincerely,

  
Leonard E. Masten, Jr.

Chairman, Hoopa Valley Tribe

Mark Lovelace

  
Chairperson, Humboldt County Board of Supervisors

<sup>3</sup> The document is listed on the The Bureau of Reclamation's Mid-Pacific website under CVP information/CVP Irrigation Ratesetting Policy.

No comments

- n/a -

cc: Honorable Dianne Feinstein  
Honorale Barbara Boxer  
Honorale Mike Thompson  
Director, Office of Management and Budget

*No comments*

- n/a -

# TR4 Yocha De Wintun Nation

Cultural Comments to the Delta Plan Program  
Environmental Impact Report  
Yocha Dehe Wintun Nation

The Yocha Dehe Wintun Nation has reviewed the EIR of the proposed Delta Plan and prepared the following comments:

First, we would like to see language that supports and encourages entering into easements with Federally Recognized Tribes. These easements can be used to further tribal rights to access sacred sites, gathering areas, and areas of other cultural significance to Tribal people. Tribes are using these easements as co-management tools for areas that previously had been unkept or mismanaged. Here is proposed language to include:

California law gives Tribal governments that are the “most likely descendants” the legal ability and right to hold “cultural easements” in their own names. Private and public landowners can use these easements as a tool to accomplish mitigation required to protect sacred sites, by involving Native peoples and governments in the process. Other public agencies have, in fact, used cultural easements successfully, to minimize and avoid disturbance of culturally important sites to the greatest extent possible. The Delta Plan encourages the use of “cultural easements” to assist landowners in this endeavor, and will recognize the mitigating significance of such easements in the permitting process.

Second, Yocha Dehe Wintun Nation feels that the direction for tribal consultation is referenced but weak in this document. There are a number of federal and state laws that will require consultation and while these are referenced, the actual language should be included in the plan. Further, there is no reference to Tribal Historic Preservation Officers (THPO) in this EIR and there are clearly lands that will be affected by this plan that fall under the jurisdiction of some THPO programs.

The section specific comments are below:

- Section 10 Opening Statement

**Please include a paragraph in the opening statement referring to consultation with federally recognized Tribes (not tribal organizations) and Tribal Historic Preservation Officers.**

## Response to comment TR4-1

This is a comment on the project, not on the EIR.

## Response to comment TR4-2

In response to this comment, please see text change(s) in Section 5 of this FEIR.

## Response to comment TR4-3

No consultation is required at this time because environmental review and approval of the Delta Plan do not involve any federal action. As explained in Master Response 1, this EIR evaluates, at a program level, the potential impacts of future actions that could be encouraged by the Delta Plan. If and when such future actions are proposed, consultation with federally recognized Tribes may be required. In response to this comment, please see text change(s) in Section 5 of the FEIR.

- Section 10.3.2.4 Yolo County line 20 21 22

This is strong language and we are appreciative of the effort to state that while there have been many surveys in the area, large amounts of land remain un-surveyed and there is a high potential for undiscovered archaeological sites.

TR4-4

**Because of the importance of this language, we request that this statement to be in the opening paragraph of the section 10.**

- Section 10.4.1 Assessment Methods line 36 37 38 39 40 41

The statements made here conflict. In lines 36 and 37 it is stated that "The Proposed Project (Delta Plan) and alternatives would not directly result in construction or operation of projects or facilities therefore would result in no direct impact on cultural resources". This directly conflicts with the next statement of "The proposed project and alternatives could result in implementations of actions or development of projects, such as facilities or infrastructure....."

TR4-5

**Please revise this section to show that the proposed delta Plan could result in a direct impact on cultural resources and make a statement on how you propose to mitigate those impacts in accordance with state, federal and local law.**

- Section 10.4.1.1 Records Search

**Please include language encouraging consultation on records with Tribal Historic Preservation Officers.**

TR4-6

- Section 10.4.1.2 Resource Types

**Please include Traditional Cultural Properties (TCP) in resource types. An explanation of the definition of a TCP can be found in National Park Service Bulletin 38 on Traditional Cultural Properties.**

"Traditional cultural properties are often hard to recognize. A traditional ceremonial location may look like merely a mountaintop, a lake, or a stretch of river; a culturally important neighborhood may look like any other aggregation of houses, and an area where culturally important economic or artistic activities have been carried out may look like any other building, field of grass, or piece of forest in the area. As a result, such places may not necessarily come to light through the conduct of archeological, historical, or architectural surveys. The existence and significance of such locations often can be ascertained only through interviews with knowledgeable users of the area, or through

TR4-7

### **Response to comment TR4-4**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### **Response to comment TR4-5**

In response to this comment, please see text change(s) in Section 5 of this FEIR.

Please also refer to Master Response 2.

### **Response to comment TR4-6**

In response to this comment, please see text change(s) in Section 5 of this FEIR.

### **Response to comment TR4-7**

The definition of "traditional cultural properties" is provided on pages 10-28 (lines 45-46) and 10-29 (lines 1-2) of the Draft Program EIR. Several sentences on page 10-23, lines 12-14, of the Draft Program EIR have been amended. Please see text change(s) in Section 5 of this FEIR.

other forms of ethnographic research. The subtlety with which the significance of such locations may be expressed makes it easy to ignore them; on the other hand it makes it difficult to distinguish between properties having real significance and those whose putative significance is spurious. As a result, clear guidelines for evaluation of such properties are needed." NPS Guidelines for Evaluating and Documenting Traditional Cultural Properties.

TR4-7

- Section 10.4.2 Thresholds of Significance

***While Tribal Consultation in determination of effects is required in CEQA, we would prefer a Tribal consultation statement be included in the beginning of this section further supporting this important and necessary step to determining significance.***

TR4-8

- Sections 10.4.3.1-5 Impact 10-1a, b, c, d and e: Disturbance of Prehistoric and Historic Era Archaeological Resources

***We request a strong tribal consultation statement that conveys the importance of early and often consultation with Tribe, this statement should be made in the opening paragraph.***

***We would like to see criterion D of Section 15064.5 CEQA Determination of impacts to Archaeological and Historic Resources SHRC written out and not referenced only.***

***We would like to see the inclusion of language from CEQA Section 15064.5 (a)(4)***

TR4-9

"(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1(j) or 5024."

- Sections 10.4.3.1-5 impact 10-4a, b, c, d and e Disturbance or destruction of Cultural Landscapes or Traditional Cultural Properties

***We request a strong tribal consultation statement be made in the opening of this section.***

***Determination of proposed affects to TCP's or Traditional Landscapes can only be made through consultation with federally recognized tribes.***

"Traditional cultural properties are often hard to recognize. A traditional ceremonial location may look like merely a mountaintop, a lake, or a stretch of river; a culturally important neighborhood may look like any other aggregation of houses, and an area where culturally

TR4-10

### ***Response to comment TR4-8***

Please see response to Comment TR4-3.

### ***Response to comment TR4-9***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### ***Response to comment TR4-10***

In response to this comment, please see text change(s) in Section 5 of the FEIR.

important economic or artistic activities have been carried out may look like any other building, field of grass, or piece of forest in the area. As a result, such places may not necessarily come to light through the conduct of archeological, historical, or architectural surveys. The existence and significance of such locations often can be ascertained only through interviews with knowledgeable users of the area, or through other forms of ethnographic research. The subtlety with which the significance of such locations may be expressed makes it easy to ignore them; on the other hand it makes it difficult to distinguish between properties having real significance and those whose putative significance is spurious. As a result, clear guidelines for evaluation of such properties are needed." National Park Service Guidelines for Evaluating and Documenting Traditional Cultural Properties

TR4-10

- Section 10.4.3.6 Mitigation Measure

***Please include support of cultural easements in this section. Here is proposed language:***

California law gives Tribal governments that are the "most likely descendants" the legal ability and right to hold "cultural easements" in their own names. Private and public landowners can use these easements as a tool to accomplish mitigation required to protect sacred sites, by involving Native peoples and governments in the process. Other public agencies have, in fact, used cultural easements successfully, to minimize and avoid disturbance of culturally important sites to the greatest extent possible. The Delta Plan encourages the use of "cultural easements" to assist landowners in this endeavor, and will recognize the mitigating significance of such easements in the permitting process.

TR4-11

- Section 10.4.3.6.1 Mitigation 10-1

***Include language in initial bullet point that makes a strong tribal consultation statement.***

Before any ground disturbance activities and during the initial planning stages of the project, a good faith effort at consultation with federally recognized tribes must occur and be documented. Tribal representatives should be given the right to attend surveys and participate in the evaluation of significance of prehistoric and/or historic sites.

TR4-12

***Lines 9 and 10, page 10-47 should also include Tribal Historic Preservation Officers.***

- Section 10.4.3.6.2 10-2 (also for 10.4.5.1.2 and 10.4.8.1.2) Mitigation Measures (Discovery of Human Remains)

***Include a tribal consultation statement and include language that stresses the importance of keeping the location and details of the discovery confidential.***

TR4-13

### ***Response to comment TR4-11***

In response to this comment, please see text change(s) in Section 5 of the FEIR.

### ***Response to comment TR4-12***

In response to this comment, please see text change(s) in Section 5 of the FEIR.

### ***Response to comment TR4-13***

In response to this comment, please see text change(s) in Section 5 of the FEIR.

# ST37 CA Transportation Commission

DARIO FROMMER, Chair  
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BIMLA G. RHINEHART, Executive Director

STATE OF CALIFORNIA



EDMUND G. BROWN Jr., Governor

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## CALIFORNIA TRANSPORTATION COMMISSION

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SACRAMENTO, CA 94273-0001  
FAX (916) 653-2134  
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November 23, 2011

Terry Macaulay  
Interim Chief Deputy Executive Office  
Delta Stewardship Council  
980 9<sup>th</sup> Street, Suite 1500  
Sacramento CA 95814

RE: Draft Program Environmental Impact Report for the Delta Plan Project

Dear Mr. Macaulay,

The California Transportation Commission, as a Responsible Agency, received the Draft Program Environmental Impact Report (DPEIR) for the Delta Plan Project in Sacramento County.

The Commission has no comments regarding the environmental issues or project alternatives to be addressed in the DPEIR. However, since consideration of the environmental impacts of a project are required prior to the Commission's allocation of funds for design, right of way or construction activities as well as for new public road connections and route adoptions, notification should be provided to the Commission, as a Responsible Agency, upon completion of the environmental process.

If you have any questions, please contact Kandra Hester-Del Bianco at (916) 653-7121.

Sincerely,

BIMLA G. RHINEHART  
Executive Director

c: Jay Norvell, Chief, Caltrans Environmental Analysis

Response to comment ST37-1  
Comment noted.

ST37-1

# ST38 CA Department of Water Resources

**From:** Vargas, Alfonso [mailto:avargas@water.ca.gov]  
**Sent:** Tuesday, January 17, 2012 2:49 PM  
**To:** Ryan, John@DeltaCouncil  
**Subject:** Water Transfers

John:

A question to you or whoever you may think may be appropriate in the Delta Council regarding the Delta Plan and Draft EIR. I am reviewing the DEIR with regards to water transfers. Water transfers are encouraged as a means to reduce reliance from the Delta imports. However, many water transfers occur from the north of the Delta (Sacramento Valley rice idling or groundwater substitution) to south of the Delta agriculture or urban. The Delta Plan is not clear with regards to these types of transfers. Does the Plan discourage through delta water transfers but encourages transfers that do not go through the Delta? Or does the Plan encourage water transfers in general without regard of their connection to the delta? ST38-1

Thanks

**Al Vargas**  
Program Manager I  
CA Department of Water Resources  
Water Transfer Program  
Division of Integrated Regional Water Management  
901 P Street  
Sacramento, CA 95814

[avargas@water.ca.gov](mailto:avargas@water.ca.gov)  
<http://www.water.ca.gov/watertransfers/>

Tel: (916) 653-3728



## Response to comment ST38-1

This is a comment on the project, not on the EIR.

The Delta Plan, as described in Section 2A of the Draft Program EIR, would not prevent water transfers from occurring, but rather would encourage water transfers that are consistent with the Delta Plan. In particular, Delta Plan Policy WR P1 requires proposed actions to export water from, transfer water through, or use water in the Delta to comply with the policy to reduce reliance on the Delta and improve regional self reliance, as further explained in Master Response 5.

Moreover, Delta Plan Recommendation WR R15 in the Revised Project directs that DWR and the SWRCB should work with stakeholders to identify measures to reduce procedural and administrative impediments to water transfers while protecting water rights and environmental resources.

# ST39 DOC

NATURAL RESOURCES AGENCY

EDMUND G. BROWN, JR., GOVERNOR



## DEPARTMENT OF CONSERVATION

*Managing California's Working Lands*

### DIVISION OF OIL, GAS, & GEOTHERMAL RESOURCES

801 K STREET • MS 20-20 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 445-9686 • FAX 916 / 323-0424 • TDD 916 / 324-2555 • WEB SITE [conservation.ca.gov](http://conservation.ca.gov)

February 1, 2012

Ms. Terry Macaulay  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

DRAFT ENVIRONMENTAL IMPACT REPORTS AND DRAFT ENVIRONMENTAL IMPACT REPORT FOR DELTA PLAN (PER 2008 DELTA REFORM ACT) (SCH# 2010122028)

Dear Ms. Macaulay:

The Division of Oil, Gas, and Geothermal Resources (Division) has reviewed the Draft Environmental Impact Report (DEIR) prepared for the above referenced project. Our comments are as follows.

The Division is mandated by Section 3106 of the Public Resources Code (PRC) to supervise the drilling, operation, maintenance, and plugging and abandonment of wells for the purpose of preventing: (1) damage to life, health, property, and natural resources; (2) damage to underground and surface waters suitable for irrigation or domestic use; (3) loss of oil, gas, or reservoir energy; and (4) damage to oil and gas deposits by infiltrating water and other causes. Furthermore, the PRC vests in the State Oil and Gas Supervisor (Supervisor) the authority to regulate the manner of drilling, operation, maintenance, and abandonment of oil and gas wells so as to conserve, protect, and prevent waste of these resources, while at the same time encouraging operators to apply viable methods for the purpose of increasing the ultimate recovery of oil and gas.

ST39-1

The scope and content of information that is germane to the Division's responsibility are contained in PRC Section 3000 et seq., and administrative Regulations under Title 14, Chapter 4 of the California Code of Regulations (CCR).

The Division recommends that all existing well sites and oil production facilities within or in close proximity to proposed project area be accurately plotted on future project maps and be carefully studied before the commencement of any construction of the proposed projects. According to the CCR, Title 14, Chapter 4, Article 2, Section 1720 (a)(2)(B) and (C), any well within 100 feet of any navigable body of water or watercourse perennially covered by water or any officially recognized wildlife preserve becomes a critical well. Critical wells require higher blowout prevention equipment (BOPE) than non-critical wells based on pressure testing and rating. The Division recommends that adequate safety measures be taken by the project manager to prevent people from gaining unauthorized access to oilfield equipment. Safety shut-down devices on wells and other oilfield equipment must be considered when appropriate.

ST39-2

Written approval from the Supervisor is required prior to changing the physical condition of any well. The operator's notice of intention (notice) to perform any well operation is reviewed on engineering and geological basis. For new wells and the altering of existing wells, approval of the proposal depends primarily on the following: protecting all subsurface hydrocarbons and fresh waters;

*The Department of Conservation's mission is to balance today's needs with tomorrow's challenges and foster intelligent, sustainable, and efficient use of California's energy, land, and mineral resources.*

## Response to comment ST39-1

Comment noted.

## Response to comment ST39-2

In response to this comment, please see text change(s) in Section 5 in this FEIR.

*Response to comment ST39-3*  
Comment noted.

protection of the environment; using adequate blowout prevention equipment; and utilizing approved drilling and cementing techniques. The Division must be notified to witness or inspect all operations specified in the approval of any notice. This includes tests and inspections of blowout-prevention equipment, reservoir and freshwater protection measures, and well-plugging operations. ST39-2

If any plugged and abandoned or unrecorded wells are damaged or uncovered during excavation or grading, remedial plugging operations may be required. If such damage or discovery occurs, the Division's district offices must be contacted to obtain information on the requirements for and approval to perform remedial operations. The Division recommends that no structure be built over or in proximity to an abandoned well location. The PRC Section 3208.1 authorizes the Supervisor to order the re-abandonment of a previously abandoned well when construction of any structure over or in the proximity of a well could result in a hazard. The cost of re-abandonment operations is the responsibility of the owner or developer of the project upon which the structure will be located.

We appreciate the opportunity to comment on the DEIR for the proposed project. If you have questions on our comments, or require technical assistance or information, please call me at (916) 323-0425 or any of the following district offices of the Division:

➤ Oil and Gas Wells

- Cypress: Syndi Pompa, (714) 816-6847
- Ventura: Bruce Hesson, (805) 654-4761
- Santa Maria: Ross Brunetti, (805) 937-7246
- Bakersfield: Dayne Frary, (661) 334-4601;
- Coalinga: Tim Boardman, (559) 935-2941; and
- Sacramento: Mike Woods, (916) 322-1110

➤ Geothermal Wells

- Sacramento: Jack Truschel, (916) 322-1787
- El Centro: Cliff Parli, (760) 353-9900
- Santa Rosa: Joe Austin, (707) 576-2385

Sincerely,



Yuko Sakano, Ph.D.  
Environmental Scientist

cc: Syndi Pompa, Division Oil and Gas District 1 Engineer  
Bruce Hesson, Division Oil and Gas District 2 Deputy  
Ross Brunetti, Division Oil and Gas District 3 Engineer  
Dayne Frary, Division Oil and Gas District 4 Engineer  
Tim Boardman, Division Oil and Gas District 5 Deputy  
Mike Woods, Division Oil and Gas District 6 Deputy  
Jack Truschel, Division Geothermal District 1 Engineer  
Cliff Parli, Division Geothermal District 2 Engineer  
Joe Austin, Division Geothermal District 3 Engineer  
Tian-Ting Shih, Ph.D., Division Environmental Program Manager

# ST40 CA State Parks

## Response to comment ST40-1

The Final Draft Delta Plan, which is analyzed in the Recirculated Draft Program EIR, includes recommendations for development of a State Park on Wright-Elmwood Tract.

From: [Essex, Cheryl](#)  
To: [comments\\_EIR@DeltaCouncil](#)  
Subject: Draft EIR comments from California State Parks  
Date: Thursday, February 02, 2012 10:57:21 AM

Thank you for the opportunity to review and comment on the Draft Environmental Impact Report for the Delta Plan.

We appreciate the inclusion of many of California State Parks' recommendations in the Proposed Project description and the Recreation section of this report. However we are concerned that only three proposed state parks are included in the draft EIR, as our *Recreation Proposal for the Sacramento-San Joaquin Delta and Suisun Marsh* (available at [www.parks.ca.gov/deltarecreation](http://www.parks.ca.gov/deltarecreation)) recommends four new state parks. In addition to Barker Slough, Elkhorn Basin and Southern Delta proposals, we recommend a potential state park on the Wright-Elmwood Tract near Stockton.

ST40-1

This and other recommendations from the Recreation Proposal should be included, such as the addition of recreational facilities at existing state parks, as they are critical to meeting the PRC Section 29702's requirement that "The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place".

Please feel free to call me if you would like to discuss these comments further or if we can provide additional information.

Cheryl Essex  
California State Parks  
Planning Division  
PO BOX 942896  
Sacramento, CA 94296  
(916) 651-0386

"Watersheds come in families; nested levels of intimacy... As you work upstream toward home, you're more closely related. The big river is like your nation, a little out of hand. The lake is your cousin. The creek is your sister. The pond is her child. And, for better or worse, in sickness and in health, you're married to your sink." Michael Parfit, National Geographic

# ST41 Delta Conservancy

## Sacramento-San Joaquin Delta Conservancy comments on Delta Plan Program Draft EIR

### Section Number: 1, Introduction

#### General Comments:

- Unfortunately, this critical section of the document is poorly written making it very difficult to understand what is being proposed and which agency has what responsibilities. The section should be edited extensively to reduce the numerous run-on sentences, overuse of scare quotes and inconsistent capitalization.

#### Specific Comments

Page; Line No.	Comment, Suggested Addition, or Edit	
1-2; 11	Change (e) to (h) to be consistent with the legislation.	ST41-1
1-2; 37-38	Sentence misstates the Council's charge in the legislation regarding implementing actions; legislation only refers to items in subsection (e) not those under (c) or (d). This misstatement can be read as enlarging the Council's scope than what was originally intended by the legislation.	ST41-2 ST41-3
1-7; 23-24	The sentence on these lines is an example of jargon; state the concept in plain language. I.e., "Historical data from the Delta paints a picture of a place with a rich history of habitat diversity that spanned several over a large area throughout time."	ST41-4
1-7; 45-46	The first sentence does not make sense. Ecosystem restoration is not a sentient being, therefore it cannot seek to restore processes, habitats, or species or be challenged. While it is true that, for example, water seeks its own level, that use of the word has a different meaning than the one used in the first sentence. Agencies (as a collective noun for people) seek and are challenged, or it may be challenging to accomplish ecosystem restoration to restore processes, habitats, and species because of challenges such as (name some examples rather than the catch-all threats and stresses).	ST41-5
1-8; 4	Consider renaming the section. Floods are a threat to Delta communities and uses, but the section implies that recreation, agriculture, and the Economic Sustainability Plan are threats as well?	ST41-6
1-9; 8	What does the term "total Delta" mean?	ST41-7
1-11; 30	Add Public Resources Code sections 32300 through 32381 to the parenthetical because that is where the Delta Conservancy's authority can be found.	ST41-8
1-13, 8	Consider replacing "governance bodies" with "government agencies". Governance is the physical exercise of management power and policy, while government is the instrument (usually collective) that does it. To distinguish the term <i>governance</i> from <i>government</i> , "governance" is what a "government" does.	ST41-9

### Response to comment ST41-1

Comment noted.

### Response to comment ST41-2

The citation of Water Code sections 85302(c) through (e) is consistent with the legislation.

### Response to comment ST41-3

The sentence referred to in the comment on page 1-2, Lines 37 and 38, of the Draft Program EIR refers to Water Code sections 85302 through 85308, not Water Code section 85020 presented on page 1-1, Lines 22 through 28, and page 1-2, Lines 1 through 8.

### Response to comment ST41-4

The text referred to in this comment on page 1-7 of the Draft Program EIR is consistent with the information presented in the cited reference; therefore, the sentence referred to in this comment was not modified.

### Response to comment ST41-5

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### Response to comment ST41-6

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### Response to comment ST41-7

The term referred to in this comment, "total Delta," is defined on page 1-9, Line 6 of the Draft Program EIR as the area within the Primary and Secondary zones of the Delta.

### Response to comment ST41-8

The paragraph referred to in this comment specifically addresses the Delta Reform Act which is not included in the Public Resources Code.

***Response to comment ST41-9***

The sentence referred to in this comment on page 1-13, Line 8, has not been modified because the wording is consistent with the Delta Reform Act language.

1-13; 9-12	The Delta Conservancy was created to work <b>collaboratively and cooperatively</b> in collaboration and cooperation with local and State governmental agencies and interested parties. It was created to be a primary State agency to implement ecosystem restoration in the Delta, with additional responsibilities to advance environmental protection and the economic well-being of Delta residents, to focus on economic sustainability for the Delta.	ST41-10
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**Section Number: 2A, Proposed Project and Alternatives**

**General Comments:**

- Poorly written and structured; very repetitive.
- Capitalization issue; e.g., secondary zone or Secondary Zone

ST41-11  
ST41-12

**Specific Comments**

Page; Line No.	Comment, Suggested Addition, or Edit	
2A-5; 25-26	Suggest revising sentence for clarity: To be consistent with the Delta Plan, certain water suppliers that receive water from the Delta are required to comply with the water supply reliability requirements listed in WR P1.	ST41-13
2A-36; 8	Change "development of" to "developing"	ST41-14
36;12	In the Delta Conservancy Interim Strategic Plan, the Delta Conservancy does not identify any strategies that include the participation in regional water resources planning efforts for water supplies. The Conservancy does identify near-term strategies, including participation in regional flood management planning efforts and assisting Delta residents and local entities in identifying, promoting, and communicating water quality needs and issues in the California Water Plan process, to meet our mandates to increase the resilience of the Delta to the effects of natural disasters and protect and improve water quality.	ST41-15
2A-36; 16-17	Change "to accomplish" to "identified in"	ST41-16
2A-56; 15	Add "and the Delta Conservancy" to sentence about funding for Economic Sustainability Plan recommendations. [PRC 32360 (b)(3) states "Funds may be allocated to a separate program within the conservancy for economic sustainability in the Delta." In that same section, the Conservancy is charged with setting up its program consistent with the ESP.]	ST41-17
36;12	In the Delta Conservancy Interim Strategic Plan, the Delta Conservancy does not identify any strategies that include the participation in regional water resources planning efforts for water supplies. The Conservancy does identify near-term strategies, including participation in regional flood management planning efforts and assisting Delta residents and local entities in identifying,	ST41-18

**Response to comment ST41-10**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment ST41-11**

Comment noted.

**Response to comment ST41-12**

The two instances that the term "secondary zone" was not capitalized in Section 2A (on page 2A-3 of the Draft Program EIR) were because these words were cited from the Delta Reform Act which does not capitalize this term.

**Response to comment ST41-13**

Comment noted; however the wording on page 2A-5 of the Draft Program EIR was not changed.

**Response to comment ST41-14**

Comment noted; however the wording on page 2A-36 of the Draft Program EIR was not changed.

**Response to comment ST41-15**

In response to this comment, please see text change(s) in Section 5 in this FEIR.

**Response to comment ST41-16**

In response to this comment, please see text change(s) in Section 5 in this FEIR.

**Response to comment ST41-17**

This is a comment on the project, not on the EIR.

**Response to comment ST41-18**

Please refer to response to comment ST41-15.

	promoting, and communicating water quality needs and issues in the California Water Plan process, to meet our mandates to increase the resilience of the Delta to the effects of natural disasters and protect and improve water quality.	ST41-18
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**Section Number: 4 Biological Resources**

**Specific Comments**

Page; Line No.	Comment, Suggested Addition, or Edit	
10;33	The word "temperature" is missing at the end of the first sentence.	ST41-19
88;31-32	In Section 4.4.5.1.3 it states that impacts on fish and wildlife habitat would be the same as those described for sensitive natural communities in Section 4.4.5.1.1, which concludes the overall adverse impacts on sensitive natural communities resulting from Alternative 1A would be greater than those under the Proposed Project. Therefore, the conclusion in Section 4.4.5.1.3 that significant impacts on fish and wildlife habitat under Alternative 1A would be less than under the Proposed Project is not supported.	ST41-20

**Section Number: 6 Land Use and Planning**

**Specific Comments**

Page; Line No.	Comment, Suggested Addition, or Edit	
6-49, 39	The Delta Conservancy Strategic Plan is listed as a document that is known to contain potential projects related to ecosystem restoration. The DC Strategic Plan will not identify any specific projects or restoration areas.	ST41-21
6-53, 1	The EIR refers to the "restoration opportunity areas designated in Figure 2-1". Figure 2-1 in the EIR is titled "General Locations of Projects Named in the Proposed or Alternatives" and does not identify any restoration opportunity areas. Figure 2-1 in the 5 <sup>th</sup> Draft of the Delta Plan is titled "A Nine-step Adaptive Management Framework for the Delta Plan" and does not identify any restoration opportunity areas.	ST41-22
6-58, 2-6	While referencing a project that is contemplated in the Delta Plan, the Sacramento Deep Water Ship Channel and Stockton Deep Water Ship Channel Dredging project, the document alternately refers to both the Army Corps and DWR as the project sponsor. Clarification as to the study author would be appreciated.	ST41-23

**Response to comment ST41-19**

In response to this comment, please see text change(s) in Section 5 in this FEIR.

**Response to comment ST41-20**

In response to this comment on page 4-88, Line 31, of the Draft Program EIR, the word "less" has been has been changed to "greater."

**Response to comment ST41-21**

This section was not revised in Response to this comment on page 6-49, Line 39, of the Draft Program EIR because the Delta Conservancy Strategic Plan is not listed as a document known to contain potential projects related to ecosystem restoration as indicated in the comment. The Delta Conservancy Strategic Plan is included in the list of bullets of "restoration areas, projects, and programs" named in the Delta Plan (lines 28 and 29). On the following page it is indicated that "The Delta Conservancy Strategic Plan is anticipated to provide a framework that would facilitate ecosystem restoration in the Delta."

**Response to comment ST41-22**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment ST41-23**

The sentence referred to in this comment on page 6-58, Lines 2 through 5, of the Draft Program EIR is referring to the ship channel dredging projects which are being sponsored by the U.S. Army Corps of Engineers and local agencies. The following sentence refers to a separate program that was being developed by DWR at the time of preparation of the Draft Program EIR. However, the requested change would not affect the evaluation of impacts and determination of significance; therefore no changes were made to the EIR.

**Section Number: 7 Agriculture and Forestry Resources**

**Specific Comments**

Page; Line No.	Comment, Suggested Addition, or Edit	
29;34-36	The Delta Conservancy Strategic Plan will provide a framework for the ecosystem restoration that the Conservancy will conduct. It is an overstatement to say that the Conservancy Strategic Plan will provide a framework that will facilitate all ecosystem restoration in the Delta. The statement could be modified to state that the Conservancy Strategic Plan will provide a framework for ecosystem restoration that the Conservancy conducts and can be a model for how to conduct restoration in the Delta.	ST41-24
35;18	This sentence suggests that large scale conversion would indirectly affect agriculture and forestland. The work indirectly should be removed from the sentence.	ST41-25
48, 14-16	The opportunities to enhance the Delta presented in these two bullets are very limited. There are many additional opportunities that should be recognized to include, agritourism, wine tasting, cultural/historical tourism, etc..	ST41-26
54, 24-28	This mitigation measure indicates that "limited" ecological restoration is permissible under the Williamson Act. Need to define what is meant by limited. If limited is defined as anything less than full scale conversion to tidal wetlands, this is cannot be considered a mitigation measure.	ST41-27

**Section Number: 16 Population and Housing**

**General Comments:**

- Inconsistencies within the chapter regarding discussion of displacing existing housing or people due to the proposed project. Discussion of all possible outcomes regarding this issue should be clearly outlined on the first page of the chapter within the introductory section.

**Specific Comments**

Page; Line No.	Comment, Suggested Addition, or Edit	
16-1;20-22	Text states that it is unlikely the proposed project will displace existing housing or people. This is inconsistent with text on line 31-37.	
16-15;31-37	Text indicates that construction of projects could lead to displacement of existing housing and people and that there is uncertainty because project-level construction and operation details are not available.	ST41-29

**Response to comment ST41-24**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment ST41-25**

In response to this comment, please see text change(s) in Section 5 in this FEIR.

**Response to comment ST41-26**

The list referred to in this comment on page 7-48, Line 14, of the Draft Program EIR, includes items that may lead to substantial construction or operational changes to existing conditions that could result in significant adverse impacts to the environment. Implementation of new facilities, such as represented on page 7-48, would support the tourism activities referred to in this comment.

**Response to comment ST41-27**

In addition to allowing the establishment of agricultural preserves, the Williamson Act allows establishing land preserves to protect open space. Although these land preserves are intended to protect land from urban development, they also are established to protect wildlife habitat, water quality, and other environmental values. According to the California Department of Conservation, the benefits of protecting these resources are "of considerable significance, and not necessarily less" than the benefits of protecting valuable farmland (California Department of Conservation 2007). In response to this comment, please see text change(s) in Section 5 of the FEIR. Also, note that the RDEIR revised this measure.

**Response to comment ST41-28**

See response to comment ST41-29.

**Response to comment ST41-29**

As described in subsection 16.4 of the Draft Program EIR, the Proposed Project and the alternatives would not result in significant adverse impacts due to population growth or displacement of existing housing or people due to the nature of the programs encouraged by the Delta Plan. The types of projects encouraged by the Proposed Project and the alternatives would not result in large numbers of new jobs that would result in significant population growth or displacement of housing. Delta ecosystem

restoration and flood risk reduction projects would result in changes in land use; however, these types of projects would occur in rural areas and are not anticipated to result in significant adverse impacts to housing as compared to existing conditions.

**Section Number: 19 Transportation, Traffic, and Circulation**

**Specific Comments**

Page; Line No.	Comment, Suggested Addition, or Edit
19-28; 11-12	This statement is incorrect. Please replace with: <i>The Delta Conservancy Strategic Plan, currently under development, will provide strategies for ecosystem restoration and economic development in the Delta, which may include strategies for increasing tourism and recreation in the region. Increases in tourism and recreation may affect transportation in the Delta.</i> ST41-30

**Section Number: 23 Bay Delta Conservation Plan**

**Specific Comments**

Page; Line No.	Comment, Suggested Addition, or Edit
27;1	We do not support any suggestion under any alternative that would give the Delta Conservancy the sole responsibility of prioritizing habitat projects suggested by the BDCP. ST41-31
23;13-14	This sentence implies that the Delta Conservancy will have sole responsibility for developing implementation plans for habitat restoration under Alternative 3. While we anticipate developing implementation plans for the restoration we will conduct, there are other agencies that will also be responsible for restoration (DFG, DWR, SFWCA). ST41-32
31, 36-41	This section suggests that BDCP restoration and enhancement activity effects could be temporary and therefore not significant or permanent. This clearly is not the case as once land is converted from agriculture to habitat that conversion is permanent. ST41-33
35, 13-14	This bullet indicates that ecosystem restoration activities could inundate shoreline trails, launching ramps and use areas. We are not aware of any expectation that restoration activities would remove facilities, though it is of course possible that they may. Our expectation is that any restoration would seek to avoid any such impacts, and that restoration conducted by the Delta Conservancy will seek to enhance access and recreation facilities associated with the restored habitat. ST41-34

**Response to comment ST41-30**

In response to this comment, please see text change(s) in Section 5 in this FEIR.

**Response to comment ST41-31**

Comment noted. Alternative 1B reflected recommendations presented in the Draft Alternate Delta Plan-Ag-Urban II Coalition Alternate Delta Plan submitted by the Association of California Water Agencies in a comment letter to the Delta Stewardship Council dated June 10, 2011.

**Response to comment ST41-32**

It is assumed that this comment refers to page 28, lines 13-14. The language is part of the assumptions for Alternative 3 in the Draft Program EIR and was not changed.

**Response to comment ST41-33**

The sentence referred to in this comment on page 23-31, Lines 36 through 41, address that some of the impacts could be temporary or permanent. Therefore, this text was not modified.

**Response to comment ST41-34**

As described on page 2B-2 of the Draft Program EIR, the Delta Stewardship Council does not have the ability to cause a project to occur, but rather seeks to influence it to move forward. How much influence the Council will have is unclear. The Program EIR evaluates, at a program level, the potential impacts of an action that could be encouraged through adoption of the Proposed Project or other alternatives. This is a very conservative approach to environmental review given that the Delta Stewardship Council does not contemplate constructing or operating any facilities through the Delta Plan nor undertaking specific activities to implement the Policies and Recommendations. Accordingly, the EIR identifies potential impacts, such as discussed in this comment, and potential mitigation measures.

**Section Number: Section 24, Other CEQA Considerations**

**Specific Comments**

Page; Line No.	Comment, Suggested Addition, or Edit
24; 31-36	We recognize that CEQA requires analysis of growth inducing impacts and considers growth inducing impacts as negative. However, the Delta is currently in need of significant economic development to ensure sustainability. The Delta Conservancy is tasked with both restoration and economic development and we believe that habitat restoration in the Delta can provide significant economic growth opportunities including many new and permanent jobs. Suggest the section be reworded to recognize the need for economic development to maintain a sustainable Delta.

ST41-35

***Response to comment ST41-35***

Comment noted, however, the specific text to which the comment refers to is not known. The need for economic development in the Delta is addressed in Section 1.3.1.3 of the Draft Program EIR. Please refer to Master Response 2.

# ST42 Caltrans

## DEPARTMENT OF TRANSPORTATION

OFFICE OF THE DIRECTOR  
P.O. BOX 942873, MS-49  
SACRAMENTO, CA 94273-0001  
PHONE (916) 654-5266  
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Flex your power!  
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February 1, 2012

Terry Macaulay  
Deputy Executive Officer  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

Dear Ms. Macaulay:

Thank you for the opportunity to review and provide comments on the November 2011 Delta Plan Draft Program Environmental Impact Report (DEIR) SCH# 2010122028. The Fifth Staff Draft of the Delta Plan (Delta Plan) is a set of proposed policies and recommendations that will make up a legally enforceable, comprehensive, long-term management plan for the Sacramento-San Joaquin Delta and the Suisun Marsh (Delta) to help achieve "coequal goals" established by the Delta Reform Act in 2009. The California Department of Transportation (Caltrans) supports and agrees that the Delta is a vital component of our State. As owners and operators of the State Highway System (SHS) we understand the importance of the Delta's transportation infrastructure that allows for the movement of people and goods through this region, and because of this, the Delta Plan and the impacts and mitigation in the program DEIR present some concerns to Caltrans.

ST42-1

As referenced in the DEIR (see attached Table 19-1) there are ten State and federal highways and two ports in the Delta project area, which covers portions of three Caltrans districts: 3, 4, and 10. State Route 160 is likely to be the most heavily impacted of the State highways that cross the Delta, because it is situated in large part on a levee in the floodplain. Our comments are as follows:

### **Delta Plan Policies**

Our concern with the Delta Plan Policies (Policies) is the possible limitations and added demands on Caltrans to successfully operate and maintain the SHS. For example, the policies listed under "Reducing Risk of Floods in the Delta" may heavily impact Caltrans' ability to simply maintain the SHS. New requirements for levee improvements are economically infeasible for Caltrans to implement.

ST42-2

Caltrans has no existing funding source to pay additional costs to support the Delta levee infrastructure. In fact, annual State expenditures for SHS maintenance are below levels needed

## Response to comment ST42-1

Comment noted.

## Response to comment ST42-2

As described in Section 2B of the Draft Program EIR, the Delta Stewardship Council does not propose or contemplate directly authorizing or mandating construction or operation of any physical activities. Rather, through the Delta Plan, the Delta Stewardship Council seeks to influence the actions, activities, and/or projects of other agencies, the details of which are under the jurisdiction and authority of the individual agencies that will propose them in the future. Thus, the Policies set forth in the Delta Plan will not, themselves, impact Caltrans' maintenance of the State Highway System.

Ms. Terry Macaulay  
February 1, 2012  
Page 2

to maintain the existing SHS. In addition, it may not be legally permissible to use Caltrans' maintenance funding sources for levee improvements.

**Delta Plan Recommendations**

The DEIR does not adequately evaluate the depth of effects Delta Plan Recommendations and Finance Plan Framework Policy Recommendations will have on federal, State, regional, and local agencies. Caltrans' concerns stem from the incorporation of information and plans, such as the Delta Risk Management Strategy and the Economic Sustainability Plan (ESP), into the Delta Plan without further analysis. Caltrans' concerns on the ESP were incorporated under Business, Transportation and Housing (BTH) into a December 14, 2011, tri-agency letter from BTH, California Natural Resources Agency, and California Department of Food and Agriculture. The recommendations from these plans, such as the construction of new roadways and bridges, are economically and environmentally unrealistic alternatives. Furthermore, page 96 of the ESP calls for the establishment of funding mechanisms, such as an assessment district to pay for maintenance of levees caused by "stressors" on the Delta ecosystem. We understand that these recommendations are meant to generate ongoing revenue and capital construction funds, but they should clarify and expand on the legal basis for charging fees to State Agencies for infrastructure improvements.

Other recommendations in the Delta Plan include items related to ecosystem preservation, flood protection, agriculture sustainability, recreation, and tourism. All of these depend extensively on the SHS for access and success. Therefore, it seems contradictory to request payment from Caltrans. Any required contributions or elevated repair costs may detract from existing SHS maintenance funding and decrease the quality of services provided by the facilities and required to fulfill other Delta Plan recommendations.

Prior reports we have received from your predecessor lead agency, such as the 2002 (December) CALFED Bay-Delta Ecosystem Restoration Program "Draft Delta Regional Area Land Use Designations and Ownership" (a subsection of the Delta Regional Ecosystem Restoration Implementation Plan, and the 2004 (January) California Bay-Delta Authority "Draft Executive Summary" and "Summary Report" In-Delta Storage Program State Feasibility Study did not bring this alternate highway and levee funding possibility to our attention.

Section 19, Transportation Traffic, and Circulation states that "... given the uncertainty of timing and location of future activities/actions that could be encouraged by the Delta Plan, it is not feasible to determine roadway levels of service in the vicinity of the actions/activities could be affected." As the Delta Stewardship Council moves forward with the implementation of Delta Plan, Policies and Recommendations, Caltrans will require detailed plans for any activities that could potentially impact the SHS. Details of work associated with Caltrans' facilities will need to be discussed including terms and conditions, timeframes, costs, and any required mitigation.

**Response to comment ST42-3**

Please refer to Master Response 2.

**Response to comment ST42-4**

Comment noted. See the response to comment ST42-8 for specific mitigation that addresses coordination with Caltrans and/or other local agencies with jurisdiction over transportation systems.

Mitigation Measure 19-1 is not adequate because it only recommends 'avoid modifications' to the SHS. Any reconstruction of mainline or bridges however would require a great deal of lead time and coordination as well as a financial plan for funding of the improvement. ST42-5

An omission was noted on Page 19-11 of the DEIR. In the discussion of transit service to the Delta region, no mention is made of the South County Transit's Delta Route serving the community of Isleton. A discussion on this transit service should be included. ST42-6

As all recommendations will require authorization and/or approvals by other agencies and some will require legislative action we request that Caltrans be kept informed and included as an active partner in the implementation of Delta Plan Policies and Recommendations. ST42-7

**Bridges, Trestles, Culverts and Other Structures in Riparian Environments**  
Some project level activities may affect riparian flow patterns upstream of bridges, trestles, culverts or other structures for which Caltrans holds responsibility. The project level environmental documents must include hydrological studies to determine whether such impacts will occur, and to identify appropriate mitigation measures such as resizing culverts. ST42-8

Throughout the Delta region, significant constraints upon traffic circulation could occur to many State highway bridges and drawbridges. These are not detailed, and there may be significant impacts to these features of the SHS during project implementation outlined in the program. For this reason, we request early coordination with all project level DEIRs from this program.

**Dike and Levee Maintenance, Repair and Upgrade**

Activities involving demolition, reinforcement or rehabilitation of dikes or levees on which transportation facilities are built may potentially affect state transportation facilities. Also, built features on top of dikes and levees may contribute additional engineering considerations related to weight loading or compaction. These factors must be addressed through geotechnical and hydrological studies conducted in coordination with Caltrans at the project level. ST42-9

**Habitat Restoration and Management**

Project level activities related to habitat restoration and management should be done in coordination with local and regional Habitat Conservation Plans, and with Caltrans, where our programs share stewardship responsibilities for certain habitats, species and/or migration routes, especially those within Caltrans' Beach Lake Mitigation Bank.

Consistent with Caltrans' comments on the 2001 Delta Wetlands Project, we recognize the need to have adequate buffer zones between State Delta Highways and any adjacent wetland areas. Because most of the Delta is peat-type highly absorptive soil, we are concerned about the subsidence problems for highway maintenance and construction. Some of these areas require ST42-10

**Response to comment ST42-5**

In response to this comment, please see text change(s) in Section 5 of the FEIR.

**Response to comment ST42-6**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment ST42-7**

Comment noted. See also the response to Comment ST42-5.

**Response to comment ST42-8**

See the response to Comment ST42-5.

**Response to comment ST42-9**

In response to this comment, please see text change(s) in Section 5 of the FEIR.

**Response to comment ST42-10**

As described in Section 2B of the Draft Program EIR, the Delta Stewardship Council does not propose or contemplate directly authorizing any physical activities, including but not limited to construction or operation of infrastructure. Rather, through the Delta Plan, the Delta Stewardship Council seeks to influence the actions, activities, and/or projects of other agencies, the details of which would be under the jurisdiction and authority of the agencies that will propose them in the future and conduct future environmental review. Accordingly, this EIR makes a good faith effort to disclose the potentially significant environmental effects of the types of projects that may be encouraged by the Delta Plan. See also the responses to Comments ST42-5 and ST42-9.

Ms. Terry Macaulay  
February 1, 2012  
Page 4

continuous or frequent pumping of water away from our facilities, even without the effects of sea level rise.

**Sea Level Rise**

The Delta Plan DEIR also acknowledges the need to coordinate with Caltrans to address sea level rise. The effects of sea level rise will have impacts on all modes of transportation located in the Delta Plan area. Executive Order S-13-08 directs State Agencies planning construction projects in areas vulnerable to sea level rise to begin planning for potential impacts by considering a range of sea level rise scenarios for the years 2050 and 2100. Higher water levels may increase erosion rates, change environmental characteristics that affect material durability, lead to increased groundwater levels and change sediment movement along shores and at estuaries and river mouths, as well as affect soil pore pressure at dikes and levees on which transportation facilities are constructed. All these factors must be addressed through geotechnical and hydrological studies conducted in coordination with Caltrans.

For guidance pertaining to the development of Project Initiation Documents and how to incorporate sea level rise concerns, please refer to Caltrans Guidance of Incorporating Sea Level Rise at the following Web site:

[http://www.dot.ca.gov/hq/tpp/offices/orip/Updated\\_Climate\\_Change/Documents/Sea\\_Level\\_Guidance\\_May2011.pdf](http://www.dot.ca.gov/hq/tpp/offices/orip/Updated_Climate_Change/Documents/Sea_Level_Guidance_May2011.pdf)

**Encroachment Permit**

Potential construction-related activities discussed in the DEIR may result in work that would encroach into the State right of way (ROW). This would require issuance of an Encroachment Permit by Caltrans prior to any commencement of work within the ROW and upon an access (driveway) point onto the SHS. An application for an Encroachment Permit must include appropriate environmental studies and a copy of the environmental document adopted by the lead agency. These documents should include an analysis of potential impacts resulting from work performed under the permit, including impacts to the SHS. Potential impacts to any cultural, biological or other resources within the ROW at the locations of the encroachments, or potential impacts resulting from hazardous waste locations, must be identified, including measures to avoid, minimize, or mitigate those impacts. All work performed within/adjacent to the ROW will be subject to Caltrans Highway Design Manual and Standards and Specifications. Further information regarding Encroachment Permits is available on the following Web site:

[http://www.dot.ca.gov/hq/traffops/developserv/permits/.](http://www.dot.ca.gov/hq/traffops/developserv/permits/)

**Response to comment ST42-11**

In response to this comment, this reference has been added to Appendix D, page D-206, Line 7219.

**Response to comment ST42-12**

In response to this comment, please see text change(s) in Section 5 of the FEIR.

Ms. Terry Macaulay  
February 1, 2012  
Page 5

To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating ROW must be submitted to the Encroachment Permits office in the appropriate Caltrans district to ascertain whether such a permit will be required. Traffic-related mitigation measures should be incorporated into the construction plans during the encroachment permit process.

Enclosed for your reference is a map of the Caltrans districts and counties within California, providing contact information for each district's Encroachment Permits Office.

Caltrans has been engaged over the past 18 months attending California Strategic Growth Council and the Climate Action Team's Climate Change, Land Use and Infrastructure Group interagency coordination meetings. We request closer coordination between these teams and with the Delta Stewardship Council to more adequately address issues for the SHS raised by the Delta Plan and DEIR.

Sincerely,



For  
MALCOLM DOUGHERTY  
Acting Director

Attachments:

- (1) Table 19-1 State-maintained Highways in the Delta and Suisun Marsh
- (2) Map of the Caltrans Districts and Counties within California

c: State Clearinghouse, Governor's Office of Planning and Research

**Response to comment ST42-13**  
Comment noted.

ST42-12

ST42-13

*No comments*

- n/a -

**Table 19-1**  
State-maintained Highways in the Delta and Suisun Marsh

Route	County	Width	Lowest Average Annual Daily Traffic (2009)	Highest Average Annual Daily Traffic (2009)
I-5	Sacramento, San Joaquin	Two to five lanes in each direction	50,000 at various locations near the Sacramento County and San Joaquin County lines	152,000 near the SR-120 junction in Stockton
I-80	Yolo	Three to five lanes in each direction	11,600 at the U.S. 50 junction in West Sacramento	11,900 at the Yolo Causeway and West Capitol Avenue in West Sacramento
I-205	San Joaquin	Three lanes in each direction	93,000 at McArthur Road	114,000 at the I-580 junction
I-680	Solano	Two to four lanes in each direction	34,500 at the I-780 junction near Benicia	120,800 along the Benicia Bridge at the Contra Costa / Solano County line
U.S. 50	Yolo	Four lanes in each direction	86,000 at Harbor Boulevard in West Sacramento	174,000 at South River Road in West Sacramento
SR-4	Contra Costa, San Joaquin	One to two lanes in each direction	7,000 near Inland Drive in unincorporated San Joaquin County	131,000 near Bailey Road in Bay Point
SR-12	Sacramento, San Joaquin, Solano	One to two lanes in each direction	15,000 at various locations near the Sacramento / San Joaquin County line	36,500 at Grizzly Island Road / Sunset Avenue in the Fairfield and Suisun City area
SR-84	Solano, Yolo	One lane in each direction	180 at the SR-220 junction on Ryer Island	2,650 at Airport Road in Rio Vista
SR-113	Solano	One lane in each direction	3,500 at Elmira Road / Fry Road in unincorporated Solano County	7,600 at Cherry Street in Dixon (outside of the Delta)
SR-160	Contra Costa, Sacramento	One lane in each direction	1,500 at Leary Road on Grand Island	13,600 at various locations near the Contra Costa / Sacramento County line in Antioch and Sherman Island
SR-220	Solano	Two lanes in each direction	100 at the SR-84 junction on Ryer Island	900 at Grand Island Road on Grand Island

Source: Caltrans 2005b

I: Interstate

SR: State Route

U.S.: federal highway

**19.3.2.1.3 County Highways**

A number of county-maintained highways are located in the Delta and Suisun Marsh. These roadways range from two-lane rural arterials, such as River Road along the Sacramento River, to four-lane arterials in suburban areas, such as Tracy Boulevard in Tracy. No county-maintained highways are located in the Delta in Alameda and Contra Costa counties. Figure 19-1 shows where these county highways are located in the Delta and Suisun Marsh, and Table 19-2 identifies their characteristics.

# APPENDIX G

No comments

- n/a -



## District Encroachment Permit Offices



**District 04**  
 111 Grand Avenue, 6th Floor  
 P. O. Box 23560  
 Oakland, CA 94623-0660  
 (510) 822-0724  
 (510) 286-4712 FAX

**District 05**  
 50 Higuera Street  
 San Luis Obispo, CA 93401-5415  
 (805) 549-3152  
 (805) 549-3062 FAX

**District 06**  
 1352 W. Olive Avenue  
 Fresno, CA 93728  
 (559) 488-4058  
 (559) 445-6510 FAX

**District 07**  
 100 South Main Street, Suite 100  
 Los Angeles, CA 90012  
 (213) 897-3831  
 (213) 897-0420 FAX

**D07 - Satellite Office**  
 850 County Square Drive, Suite 112  
 Ventura, CA 93003  
 (805) 650-7179

**District 08**  
 484 W 4th Street MS 819  
 San Bernardino, CA 92401-1400  
 (909) 383-4526  
 (909) 383-4224 FAX

**District 09**  
 500 South Main Street  
 Bishop, CA 93514  
 (760) 872-0874  
 (760) 872-5215 FAX

**District 10**  
 1976 E. Charter Way/MLK Jr Blvd (95205)  
 P. O. Box 2048  
 Stockton, CA 95201  
 (209) 949-7801  
 (209) 949-7232 FAX

**District 11**  
 4050 Taylor St MS 110  
 San Diego, CA 92110  
 (619) 688-6158  
 (619) 688-8157 FAX

**District 12**  
 3347 Michelson Drive., Suite 100  
 Irvine, CA 92612

Mailing address:  
 3337 Michelson Drive., Suite 380  
 Irvine, CA 92612-8894  
 (949) 724-2445  
 (949) 724-2265 FAX

**District 01**  
 1656 Union Street (95501)  
 P. O. Box 3700  
 Eureka, CA 95502-3700  
 (707) 445-6385  
 (707) 445-6317 FAX

**D01- Satellite Office**  
 90 W. Lake Mendocino Dr.  
 Ukiah, CA 95482  
 (707) 483-4743  
 (707) 483-4738 FAX

**District 02**  
 1657 Riverside Drive (96001)  
 P. O. Box 486073  
 Redding, CA 96049-8073  
 (530) 225-3400  
 (530) 225-3097 FAX

**District 03**  
 703 "B" Street  
 P. O. Box 911  
 Marysville, CA 95901  
 (530) 741-4403  
 (530) 741-4238 FAX

\*Eastern Kern County and Northern San Bernardino County is under D07's jurisdiction. Please contact the office if you have any questions

# ST43 CVFPB

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY  
**CENTRAL VALLEY FLOOD PROTECTION BOARD**  
3310 El Camino Ave., Rm. 151  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682  
PERMITS: (916) 574-2380 FAX: (916) 574-0682

EDMUND G. BROWN JR., GOVERNOR



February 1, 2012

Ms. Terry Macaulay  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, California 95814

Subject: Delta Plan Draft Environmental Impact Report SCH Number: 2010122028

Dear Ms. Macaulay:

The Central Valley Flood Protection Board (Board) is responsible for flood safety within the California Central Valley and maintains the integrity of the existing flood control system and designated floodways through the Board's regulatory authority by issuing permits for encroachments and partnering with the U.S. Army Corps of Engineers to build, repair and strengthen flood control facilities. Projects within the jurisdiction of the Board are required to meet standards for the construction, maintenance, and protection of adopted plans of flood control that will protect public lands from floods. The jurisdiction of the Board includes the Central Valley and the Delta, including all tributaries and distributaries of the Sacramento River, the San Joaquin River, and designated floodways (Title 23 California Code of Regulations (CCR), Section 2).

Regional conservation planning within the Delta requires balancing project needs with multiple environmental objectives. Working with the Delta Stewardship Council early in the planning process will help identify and mitigate potential adverse impacts to the flood control system without adversely impacting flood risks, levee integrity and the Board's flowage easements within the flood control system including, but not limited to, the Delta and the Yolo Bypass.

Staff for the Central Valley Flood Protection Board has reviewed the subject document and provides the following comments:

1. The Delta Plan strategies should consider impacts to the flood control system when the Council incorporates another plan, project, or program into the Delta Plan, including the following:

Structural Integrity Impacts - Projects proposed in the Delta Plan should include engineering solutions for mitigating impacts to the structural integrity of the levees and other structures within the State Plan of Flood Control.

Hydraulic Impacts - Hydraulic impacts due to encroachments could impede flood flows, reroute flood flows, and/or increase sediment accumulation. Projects proposed in the Delta Plan should include mitigation measures for channel and levee improvements and maintenance to prevent and/or reduce hydraulic impacts.

## Response to comment ST43-1

Comment noted.

## Response to comment ST43-2

This EIR identifies programmatic mitigation measures to avoid increasing flood potential by addressing potential hydraulic impacts, structural integrity impacts, and sediment and vegetation management, as described in EIR subsection 5.4.3.6. As described in Section 2B of the Draft Program EIR, the Delta Stewardship Council does not propose or contemplate directly authorizing any physical activities, including but not limited to construction or operation of infrastructure. Rather, through the Delta Plan, the Delta Stewardship Council seeks to influence the actions, activities, and/or projects of other agencies, the details of which would be under the jurisdiction and authority of the agencies that will propose them in the future and conduct future environmental review. Without specific details of future projects, it is not possible for the Delta Stewardship Council to design site-specific mitigation measures. Accordingly, in the absence of specific proposed physical projects, this EIR makes a good faith effort to disclose the potentially significant environmental effects of the types of projects that may be encouraged by the Delta Plan and to identify program-level mitigation measures. Impacts on each of the potentially affected resources areas are analyzed at a program level in Sections 3 through 21 of this EIR.

Long Term Vegetation Management - Sediment accumulation has resulted in the establishment of woody vegetation within the Delta channels. Woody vegetation growth that is not managed has a negative impact on channel capacity and increases the potential for levee over-topping. When a channel develops vegetation that then becomes habitat for wildlife, maintenance to initial baseline conditions becomes more difficult as the control of vegetative growth may be subject to environmental constraints.

ST43-2

Projects proposed in the Delta Plan should include vegetation maintenance plans and funding for maintaining agencies responsible for managing desirable habitat without unduly compromising channel capacity. Vegetation management within the flood control system is difficult due to the potential to contaminate surface water resulting from herbicide applications and increased costs for manual vegetation removal. State and local maintaining agencies responsible for vegetation management are subject to significant increases in maintenance costs when implementing vegetation control measures.

2. Section 2A, Page 2A-2, states "Certain actions are statutorily excluded from the definition of covered action in Water Code section 85057.5(b), including the following: A regulatory action of a State agency (such as adoption of a water quality control plan by the State Water Resources Control Board or issuance of a California Endangered Species Act permit by the Department of Fish and Game)".

In accordance with Water Code Section 85057.5 (b) "Covered action" does not include any of the following: (1) A regulatory action of a state agency."

Section 2A, Page 2A-2 and the Delta Plan should be revised to show:  
"The Central Valley Flood Protection Board actions are not a covered action and are exempt from the Delta Plan when approving projects, designating floodways, enforcing Title 23 California Code of Regulations, and issuing encroachment permits to enforce standards for the construction, maintenance, and protection of adopted flood control plans including, but not limited to, the Delta and the Yolo Bypass."

ST43-3

The Central Valley Flood Protection Board executes regulatory actions by approving projects, enforcing Board standards, and issuing encroachment permits to enforce standards for the construction, maintenance, and protection of adopted flood control plans that will protect public lands from floods. As a result, the regulatory actions of the Central Valley Flood Protection Board would not be a covered action under the Delta Plan.

3. Section 2A, Page 2A-4 states "Although a regulatory action by another State agency is not a "covered action," the underlying action regulated by that agency can be a covered action (provided it otherwise meets the definition in subsection 2.1.2, above)".

In accordance with Water Code Section 85057.5 (b) "Covered action" does not include any of the following: (1) A regulatory action of a state agency." The definition showing "the underlying action regulated by that agency can be a covered action..." appears to conflict with Water Code Section 85057.5.

ST43-4

### *Response to comment ST43-3*

This is a comment on the project, not on the EIR. Regulatory action of a state agency is one of the exemptions to the definition of a covered action (Water Code section 85057.5).

### *Response to comment ST43-4*

This is a comment on the project, not on the EIR. The underlying action regulated by another state agency, such as a proposed encroachment in a floodway, can be a covered action.

The Delta Plan and the Draft EIR should be revised to show "Covered actions in accordance with Water Code Section 85057.5 do not include regulatory actions of a state agency."

4. Figure 5-1 only shows State - Federal Project Levees. Figure 5-1 should be revised to include the Board's regulated streams, as the Board also regulates streams without levees within the Delta. ST43-5
5. Section 5.3.1 should list Title 23 California Code of Regulations as a reference under the heading "Major Sources of Information". ST43-6
6. Section 5.3.4, page 5-6, Line 6 should list "Designated Floodways" as the Board's jurisdiction includes designated floodways located within the Delta. ST43-7
7. Section 5.3.4.3, page 5-10, Lines 17 and 18 should be corrected to state that the Stewart Tract levees are State - Federal project levees and are regulated by the Board. The Draft EIR incorrectly states that these are non-project levees. ST43-8
8. Section 5.4.3.2, page 5-44, lines 25-31 should be revised to state that Cache Slough, Consumnes River, Mokelumne River, San Joaquin River, and Yolo Bypass are regulated by the Board. The Draft EIR should state that any proposed project, including restoration projects, within these waterways will require approval and permitting by the Board. The Board is required to maintain design flood flow capacity within these waterways and will require that no adverse hydraulic impacts will result. ST43-9
9. Section 5, Page 5-9, Figure 5-3: The figure is titled "The San Joaquin River Flood Control Project," but depicts the Sacramento River Flood Control Project. The map should be corrected to show the San Joaquin River Flood Control Project. ST43-10
10. Section 22, Page 22-41: Table 22-1 Related Actions, Programs, and Projects Considered in the Cumulative Impact Assessment shows "The plan is scheduled for adoption by the Central Valley Flood Control Board in 2012." Revise to show "...Central Valley Flood Protection Board ...". ST43-11
11. The Central Valley Flood Protection Board, as a responsible agency (Public Resources Code Section 21069), received the Draft Delta Plan Environmental Impact Report Executive Summary, November 2011 SCH# 2010122028, and a CD-ROM, however, the CD-ROM was blank and did not include the Delta Plan Draft Environmental Impact Report. The Delta Plan Draft EIR was available via the Internet address <http://www.deltacouncil.ca.gov/delta-plan-draft-eir>. ST43-12
12. Appendix D, page D-28, Section 2.2.19, Line 837: The Board and the Department of Fish and Game have an agreement to manage habitat within the Yolo Basin Wetlands Project within the Yolo Bypass. The regulatory framework should include reference to this agreement (enclosed). ST43-13
13. On September 14, 2011, the Board provided comments on the Fifth Staff Draft of the Delta Plan. The comments are enclosed and should be included in the Delta Plan. ST43-14

### ***Response to comment ST43-5***

Figure 5-1 is consistent with the paragraph on page 5-4 of the Draft Program EIR that discusses project and non-project levees, and does not need to be modified.

### ***Response to comment ST43-6***

Subsection 5.3.1 includes reference materials used in preparing Section 5 of the EIR. The regulations in Title 23 of the California Code of Regulations were considered as general background during preparation of this EIR.

### ***Response to comment ST43-7***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### ***Response to comment ST43-8***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### ***Response to comment ST43-9***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### ***Response to comment ST43-10***

A revised Figure 5-3 was issued as an erratum to the Draft Program EIR on November 4, 2011.

### ***Response to comment ST43-11***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### ***Response to comment ST43-12***

Comment noted.

### ***Response to comment ST43-13***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST43-14***

Comment noted. The draft Delta Plan has since been amended. The Final Draft Delta Plan was published in November 2012 and analyzed in the Recirculated Draft Program EIR.

February 1, 2012  
Ms. Terry Macaulay  
Page 4 of 4

A Board permit is required prior to starting work within the Board's jurisdiction for the placement, construction, reconstruction, removal, or abandonment of any landscaping, culvert, bridge, conduit, fence, projection, fill, embankment, building, structure, obstruction, encroachment, excavation, the planting or removal of vegetation, and any repair or maintenance that involves cutting into the levee (CCR Section 6).

The permit application and Title 23 CCR can be found on the Central Valley Flood Protection Board's website at <http://www.Board's.ca.gov/>. Maps showing the Board's jurisdiction are available via Internet website at <http://gis.bam.water.ca.gov/bam>. Additional references are enclosed, including a map identifying the State Flood Control Facilities within the Legal Boundary of the Delta and a table showing State Flood Control Features within the Legal Boundary of the Delta.

If you have broad policy questions, please contact Eric Butler, Supervising Engineer, at (916) 574-0707, or via email at [ebutler@water.ca.gov](mailto:ebutler@water.ca.gov), or for environmental questions, contact James Herota, Staff Environmental Scientist at (916) 574-0651, [jherota@water.ca.gov](mailto:jherota@water.ca.gov).

Sincerely,



Jay S. Punia, P.E.  
Executive Officer

Enclosures

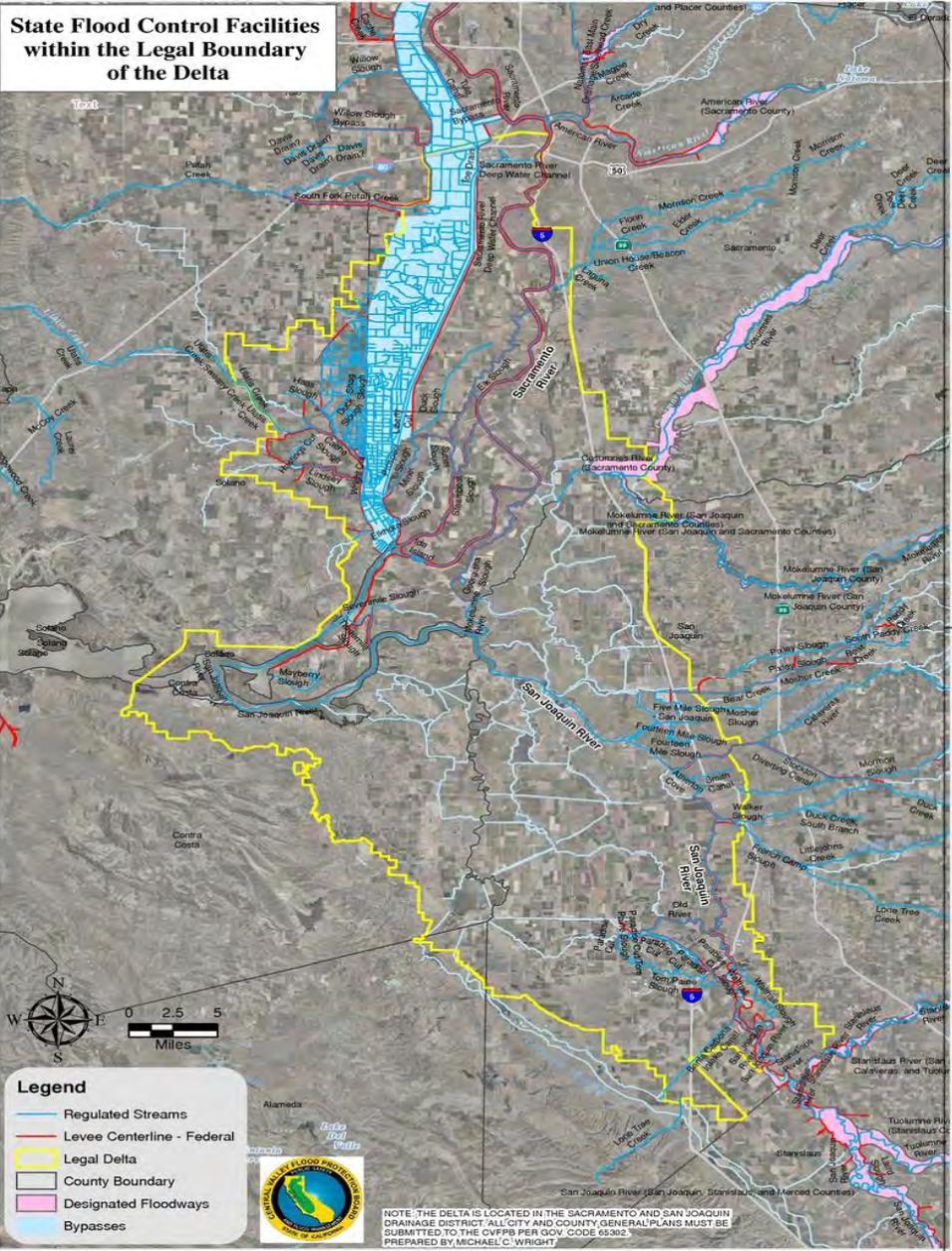
cc: Governor's Office of Planning and Research  
State Clearinghouse  
1400 Tenth Street, Room 121  
Sacramento, California 95814

Eric Butler, Supervising Engineer

## Response to comment ST43-15

Comment noted.

**State Flood Control Facilities  
within the Legal Boundary  
of the Delta**



*No comments*

- n/a -

**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Avenue, Suite 151  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682  
PERMITS: (916) 574-2380 FAX: (916) 574-0682



*No comments*

- n/a -

September 14, 2011

Ms. Terry Macaulay, P.E.  
Acting Deputy Executive Officer  
Delta Stewardship Council  
980 9th Street, Suite 1500  
Sacramento, California 95814

Dear Ms. Macaulay:

The Central Valley Flood Protection Board (Board) hereby submits the following comments on the Fifth Staff Draft of the Delta Plan, dated August 2, 2011. The comments address matters discussed in **Chapter 7 – Reduce Risk to People, Property, and State Interests in the Delta**.

Page 165, Lines 10-18:

Encroachments located within project levees and project levee right-of-way are jurisdictionally permitted through the Central Valley Flood Protection Board. The California Code of Regulations, Title 23 Waters, Division 1 Central Valley Flood Protection Board (Title 23) describes this encroachment permit process. The encroachment permit process applies to all projects existing and proposed within State/federal flood control levees, designated floodways, bypasses, and regulated streams. There is no exemption for ecosystem restoration projects, ongoing agricultural or flood management activity. Board permits may also be required for Covered Actions listed in Table 7.1.

The Central Valley Flood Protection Board must be consulted for any encroachment involving facilities of the State Plan of Flood Control, which are listed in Title 23. This comment was made on the Third Draft of the Delta Plan but was not incorporated into either the Fourth or Fifth Draft. **The Board insists that this comment be incorporated into the Delta Plan.**

Page 165, Lines 19-32:

Board permits are required for any existing or proposed projects located in the following areas. There is no exemption from the Board's permit process for ecosystem restoration projects, ongoing agricultural or flood management activity in any of these Board-jurisdictional areas:

- Areas located in the Yolo Bypass from Fremont Weir through Cache Slough to the Sacramento River including the confluence of Putah creek into the bypass;
- The Cosumnes River-Mokelumne River confluence;

Ms. Terry Macaulay  
September 14, 2011  
Page 2

*No comments*

- n/a -

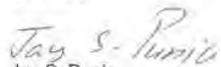
- The Lower San Joaquin River, Lower San Joaquin River Floodplain Bypass, Paradise Cut, and any other slough, bypass, or channel protected by State/federal levees included in the State Plan of Flood Control and Central Valley Flood Protection Plan.

Page 165, Lines 25-32:

The Board recommends that any modifications proposed for the Lower San Joaquin River Floodplain Bypass should be fully vetted in the Delta Plan Environmental Impact Report on a programmatic level. Again, this comment was submitted against the Third Draft but not acknowledged in either the Fourth or Fifth Draft.

Thank you for allowing the Central Valley Flood Protection Board to comment on the Fifth Draft Delta Plan. We sincerely hope that you will incorporate these comments into the Delta Plan. If you have any questions, please contact Mr. Len Marino at (916) 574-0608 or email at [lmario@water.ca.gov](mailto:lmario@water.ca.gov).

Sincerely,



Jay S. Punia  
Executive Officer

cc: All Board members  
Deborah Smith, Deputy Attorney General

State Flood Control Features within the Legal Boundary of the Delta

State / Federal Levees	Location within Delta Boundary
Banta California Intake Canal	From 2800 +/- south west of San Joaquin River to San Joaquin River
Bear Creek	From Thornton Road to Thrifty Parkway
Cache Slough	Ulatis Creek to Yolo Bypass
Calaveras River	From open space between onset St. and La Cresta Way, Stockton, to San Joaquin River
Elk Slough	From Sacramento River to Sutter Slough
French Camp Slough	From Interstate 5 to San Joaquin River
Geopina Slough	From Sacramento River to Mokelumne River
Hass Slough	From Bunker Station Road to Ulatis Creek
Lindsey Slough	From Hastings Cut to Wright Cut
Minor Slough	From Sutter Slough to Duck Slough and from Duck Slough to Sacramento River Deep Water Channel (East side only)
Dig River	From Paradise Cut to San Joaquin River
Paradise Cut	From Tom Paine Slough to San Joaquin River
Sacramento River	Street Bridge to Mayberry Slough
Sacramento River Deep Water Ship Channel	From West Sacramento to Minor Slough (N) and from Minor Slough (S) to Sutter Slough
San Joaquin River	From Stanislaus to McArthur Cove
Shag Slough	Yolane Mills Road to Cache Slough
Stuamboat Slough	Sacramento River to Sutter Slough
Sutter Slough	Sacramento River to Sacramento River Deep Water Channel
Thruville Slough	San Joaquin River to Sacramento River
Ulatis Creek	South side only from 2.5 +/- miles upstream of Cache Creek Slough
Walker Slough	North side only from South Williamson Road to San Joaquin River
Wright Cut	West side only, All

Designated Floodways	Location within Delta Boundary
Cosumnes River	Along Cosumnes River from Delta Boundary to Mokelumne River
Mokelumne River	From the extension of North Ray Road to Cosumnes River
San Joaquin River	From confluence of San Joaquin River and Stanislaus River to 300 +/- downstream of Cosumnes Road
Stanislaus	2800 +/- east of Minnerca Road to the confluence of Stanislaus River and San Joaquin River

Regulated Streams / Stream Title	Location within Delta Boundary
McArthur Cove	All
Banta California Intake Canal	California Aqueduct to San Joaquin River
Bear Creek	Thornton Road to Mosher Slough
Cache Slough	All
Calaveras River	From open space between onset St. and La Cresta Way, Stockton, to San Joaquin River
Cosumnes River	From Delta Boundary to 3,700 +/- west of Interstate 5
Duck Slough	All (within Yolo Bypass)
Elk Slough	All
Free Mile Slough	All
Fourteen Mile Slough	All
French Camp Slough	From the Delta Boundary to the San Joaquin River
Geopina Slough	All
Hass Slough	All
Hastings Cut	All
High Island	All
Liberty Cut	All (within Yolo Bypass)
Lindsey Slough	All
Mayberry Slough	All
Minor Slough	All
Mokelumne River	From the extension of N. Ray Road to Cosumnes River
Morrison Slough	Delta Boundary / Cimber Street (Stockton) to Stockton Pier
Morrison Creek	From Delta Boundary to Sacramento River
Mosher Slough	Thornton Road to Bear Creek
Dig River	From Paradise Cut to San Joaquin River
Paine Slough	All
Paradise Cut	From San Joaquin River to Dig River
Prospect Slough	All (within Yolo Bypass)
Sacramento River	Street Bridge to San Joaquin River
Sacramento River Deep Water Ship Channel	From Sacramento River (West Sac.) to Sacramento River
San Joaquin River	From Stanislaus River to Sacramento River
Sevumville Slough	All
Shag Slough	All (within Yolo Bypass)
Smith Canal	All
South Fork Putah Creek	From Road 306 to Yolo Bypass
Stuamboat Slough	All
Sutter Slough	All
Thruville Slough	All
Tom Paine Slough	All
Ulatis Creek	From Rio Dixon Road to Cache Slough
Walker Slough	From Delta Boundary to French Camp Slough
Walker Slough	From Delta Boundary to French Camp Slough
Wright Cut	All

No comments

- n/a -

MANAGEMENT AGREEMENT  
AMONG  
CALIFORNIA DEPARTMENT OF FISH AND GAME  
CALIFORNIA DEPARTMENT OF WATER RESOURCES  
AND  
THE RECLAMATION BOARD OF THE STATE OF CALIFORNIA  
REGARDING  
YOLO BASIN WETLANDS

*No comments*

- n/a -

WHEREAS, The Reclamation Board ("Board") entered into a Memorandum of Understanding with the U.S. Army Corps of Engineers ("Corps") on November 30, 1953, setting forth the responsibilities of the Board for the Sacramento River Flood Control Project ("SRFCP"), including the Yolo Bypass; and

WHEREAS, in the 1953 Memorandum of Understanding, the Board agreed to hold and save the United States free from claims for damages resulting from construction of the works and to maintain and operate all works after their completion; and

WHEREAS, in 1955, the Corps promulgated an Operation and Maintenance Manual for SRFCP, including the Yolo Bypass, which requires specified maintenance including the following:

- Maintaining the channel and floodway clear of debris, weeds, and wild growth; and

- Maintaining the channel and floodway such that there is no restriction by deposition of waste materials, building of unauthorized structures or other encroachments; and
- Maintaining the channel and the floodway in such a way that the capacity is not reduced by the formation of shoals; and
- Weeds and other plant growth in the channel and floodway are to be cut in advance of the flood season, and together with all debris, removed from the channel and floodway; and

WHEREAS, the Corps recognizes that the 1955 SRECP Operation and Maintenance Manual will be modified to direct the Department of Fish and Game ("DFG") to be responsible for maintenance within the boundaries of the project modification, and that maintenance activities will be different than those presented in 1955, but consistent with the purposes of public safety; and

WHEREAS, floodwaters in the Yolo Bypass flowed at or above design capacity during February 1986; and

*No comments*

- n/a -

WHEREAS, DFG has entered into a Local Cooperation Agreement with the Corps for a modification of SRFCP, including the development of wetlands, uplands, riparian woodland, and related habitats ("Project Modification"); and

WHEREAS, pursuant to this LCA, DFG will be assuming various operation and maintenance obligations and holding the United States harmless from claims arising out of the Project Modification; and

WHEREAS, Water Code Section 8618 authorizes DFG to enter into an agreement with the Board obligating DFG to do and perform those things required of the State by federal law for SRFCP, and for DFG to assume responsibility for all claims of damage or liability made against the State and its agencies or the United States arising from the Project Modification; and

WHEREAS, pursuant to Water Code Section 8360, the Department of Water Resources ("DWR") has supervisory powers over the maintenance and operation of SRFCP, of which the Yolo Bypass is a part; and

WHEREAS, pursuant to Water Code Section 8361, DWR has the direct obligation to maintain the Yolo Bypass; and

*No comments*

- n/a -

WHEREAS, DWR, the Board, DFG and the Corps believe that the Project Modification can be compatible with flood control; and

WHEREAS, the respective parties hereto wish to clarify the operation, maintenance, and other obligations for that portion of the Yolo Bypass Project affected by the Project Modification; and

WHEREAS, the Board is allowing wetlands to become established in an area of the Bypass formerly used for agricultural purposes; and

WHEREAS, DFG, DWR, and the Board agreed to enter into this Agreement in lieu of an encroachment permit; and

WHEREAS, it is the intent to make this Agreement a part of the Project Modification Operations and Maintenance Manual.

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. The Parties agree to cooperate in the operation and maintenance of the portion of SRFCP affected by the Project Modification; and
2. DWR shall continue to maintain the levees pursuant to the Corps' 1955 Operation and Maintenance Manual; and

*No comments*

- n/a -

*No comments*

- n/a -

3. DFG will monitor, operate, maintain, repair, replace, and reconstruct ("manage") the Yolo Bypass channel in the Project Modification area pursuant to the Corps' Project Modification Operation and Maintenance Manual; and
4. DWR and the Board shall have only oversight responsibility for management of the Project Modification, unless DFG fails to perform such management; and
5. DFG will endeavor to manage the Project Modification in a manner that will be compatible with agricultural practices.<sup>1/</sup> The management of the Project Modification will be compatible with and not adversely affect maintenance or repair practices of SRFCF adjacent to the Project Modification.
6. Before undertaking any management actions necessary for public safety purposes, DWR shall contact the DFG Regional Manager by telephone or telefax and by letter thirty (30) days prior to any work during non-flood season; and
7. During flood season, DWR need only notify the DFG, Region 2, Regional Manager by telephone or telefax prior to performing the work; and

---

1. The foregoing provision is not intended to create any enforceable rights for third party claims regarding adjacent agriculture.

8. DFG agrees to hold the Board and DWR harmless and assumes responsibility for all claims of damage or liability made against DWR or the Board arising in any way from the construction, operation and maintenance of the Project Modification; and
9. DWR will continue to operate SRFCP for which it has responsibility, including the Yolo Bypass; and
10. If after the Project Modification is constructed and the Board receives State authorization for a future flood control project in the Yolo Bypass that coincides with some or all of the geographical area of the Project Modification, DFG shall seek State authorization for cosponsorship and funding for the flood control project through the annual budget process. DFG funding and cosponsorship shall be restricted to the State portion of the increased project and mitigation that are directly attributed to the Project Modification, which is the subject of this Agreement; and
11. Prior to any construction in the Yolo Bypass, DFG shall submit four sets of complete plans and specifications for the Board's and DWR's review, comment, and recommendations; and

*No comments*

- n/a -

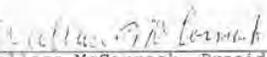
12. DFG shall not allow commencement of construction prior to receiving, and incorporating to the extent feasible as determined by the Corps, in consultation with DFG, the Board's recommendations on the submitted plans and specifications.

13. This Agreement may be executed in several duplicate counterparts, each of which shall be an original.

California Department of Fish  
and Game

By:  Date: Feb 11, 1994  
Boyd H. Gibbons, Director

The Reclamation Board

By:  Date: Feb 23 1994  
Wallace McCormack, President

California Department of Water  
Resources

By:  Date: Feb 7-94  
David N. Kennedy, Director

**No comments**

- n/a -



February 2, 2012

Terry Macaulay  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, California 95814

SUBJECT: Comments on the Delta Plan Draft Environmental Impact Report

Dear Ms. Macaulay:

On November 8, 2011, the Commission received the Delta Plan Draft Environmental Impact Report (DEIR). Thank you for the opportunity to comment.

Although the San Francisco Bay Conservation and Development Commission (Commission) has not reviewed the DEIR, the following staff comments are based on the McAteer-Petris Act, the Suisun Marsh Preservation Act (Marsh Act), the Commission's *San Francisco Bay Plan* (Bay Plan), the *Suisun Marsh Protection Plan* (Marsh Plan), the Commission's federally-approved coastal management program for the San Francisco Bay, and the federal Coastal Zone Management Act (CZMA). -ST44-1

**Jurisdiction.** The Commission's permit jurisdiction includes all tidal areas of the Bay up to the line of mean high tide or, in areas of tidal wetlands, up to five feet above mean sea level, including all areas formerly subject to tidal action that have been filled since September 17, 1965; and the shoreline band that extends 100 feet inland from and parallel to the Commission's Bay jurisdiction. The Commission also has jurisdiction over certain managed wetlands adjacent to the Bay, salt ponds, and certain waterways, and the Suisun Marsh.

Commission permits are required for placement of fill, construction, dredging, and substantial changes in use within its jurisdiction. Permits are issued when the Commission finds proposed activities to be consistent with its laws and policies. In addition, federal actions (including plans), permits, projects, licenses and grants affecting the Commission's coastal jurisdiction are subject to review by the Commission, pursuant to the federal CZMA, for their consistency with the Commission's federally-approved coastal management program for the Bay. -ST44-2

The Marsh Act grants the Commission regulatory authority to issue marsh development permits in the primary management area of the Suisun Marsh, defined as water-covered areas, tidal marshes, diked wetlands, seasonal marshes, and certain lowland grasslands specified on the Marsh Plan Map. The Marsh Act also established a secondary management area composed principally of upland grasslands and cultivated lands, also specified on the Marsh Plan Map, to serve as a buffer between the primary management area and developed lands outside the Marsh. Within the secondary management area, local governments issue marsh development permits pursuant to a local protection program certified by the Commission, and these permits can be appealed to the Commission.

Response to comment ST44-1

Comment noted.

Response to comment ST44-2

Comment noted.

From our review of the DEIR, the staff has identified the following issues within the Commission's jurisdiction that require analysis in the Final EIR: definition of the secondary planning area for the EIR, habitat protection and restoration, fresh water inflow, climate change, minimizing harmful effects to the Bay, and mitigation.

**Definition of the Secondary Planning Area for the EIR.** The DEIR references the Notice of Preparation, which defined the secondary planning area as consisting of "the geographical areas that provide water to the Delta (Delta watershed and Trinity River watershed from which water is exported to the Delta watershed) and areas outside of the Delta that use water exported from the Delta." Part of the basis for this definition is found in Section 85302(b) of the Delta Reform Act, which states, "The geographic scope of the ecosystem restoration projects and programs identified in the Delta Plan shall be the Delta, except that the Delta Plan may include recommended ecosystem projects outside the Delta that will contribute to achievement of the coequal goals." The Bay-Delta is a single estuary, and ecosystem restoration projects in the Bay contribute to the health of the Delta ecosystem, one of the co-equal goals. Therefore, the Bay should be included in the secondary planning area for the Final EIR, and the impacts of the Delta Plan on the Bay, including the impacts of the proposed water diversion and conveyance projects on fresh water and sediment flow to the Bay, should be analyzed.

**Habitat Protection and Restoration.** The DEIR states that the proposed project (i.e., the draft Delta Plan) encourages implementation of habitat restoration projects in five main areas, including the Suisun Marsh (ER R1). The DEIR further states:

The Proposed Project also encourages the Delta Conservancy to develop and adopt criteria for prioritization and integration of large-scale ecosystem restoration in the Delta and Suisun Marsh considering sustainability, best available science, processes for ownership and management of these lands, and development of a habitat credit program for programs implemented in multiple phases (ER R2 and ER R3).

The Commission's laws and policies call for protecting the diversity of habitats in the Suisun Marsh, restoring tidal habitats, and protecting fish, other aquatic organisms and wildlife, particularly threatened and endangered species and their habitats.

More specifically, the Marsh Plan policies state, in part:

The diversity of habitats in the Suisun Marsh and surrounding upland areas should be preserved and enhanced wherever possible to maintain the unique wildlife resource....

Where feasible, historic marshes should be returned to wetland status, either as tidal marshes or managed wetlands. If, in the future, some of the managed wetlands are no longer needed for private waterfowl hunting, they should be restored to tidal or subtidal habitat, or retained as diked wetland habitat and enhanced and managed for the benefit of multiple species....

### **Response to comment ST44-3**

Section 3 describes impacts of the Delta Plan and alternatives on Delta outflow to describe water flow into the San Francisco Bay. Delta outflow is anticipated to increase under the Delta Plan as compared to existing conditions (page 3-83 of the Draft Program EIR). Sections 3 and 11 describe potential impacts of the Delta Plan and alternatives to increase sediment discharges as compared to existing conditions, and mitigation measures to reduce increased sediment discharge into the Delta watershed that could increase sediment load in San Francisco Bay. Impacts 11-4a, 11-4b, 11-4c, and 11-4d are considered to be significant for the Delta Plan even after consideration of Mitigation Measures 11-4 (page 11-75 of the Draft Program EIR). Section 4 describes potential impacts of the Delta Plan and alternatives to reduce downstream sediment supplies that could adversely affect tidal wetlands as compared to existing conditions. Impact 4-1d is considered to be significant for the Delta Plan (page 4-77 of the Draft Program EIR). Specific impacts to the Bay are too speculative and so are not analyzed in the EIR.

### **Response to comment ST44-4**

Please see the response to comment ST44-3.

Ongoing large-scale efforts to restore Bay wetlands have great potential to benefit the entire estuary, including species of concern, yet these projects could inadvertently be adversely affected if Delta management actions, such as restoring Delta islands, result in the capture of sediments that would otherwise flow to the Bay. We request that the Final EIR include analysis of sediment dynamics throughout the whole system, including potential impacts on the Bay that may result from management actions or projects proposed in the Delta Plan.

**Fresh Water Inflow to the Suisun Marsh and the Bay.** The DEIR states that the draft Delta Plan encourages the State Water Resources Control Board to develop, implement, and enforce updated flow requirements for the Delta and high-priority tributaries in the Delta watershed that would likely result in a more natural flow regime in the Delta and Delta tributaries, and reduced export of water from the Delta. The DEIR further states that the flow objectives would likely provide increased Delta outflows in the winter, spring, and fall months, and increased Delta inflows from the Sacramento and San Joaquin rivers in the winter and spring months. These types of flow changes could increase the presence of freshwater in the Delta in the winter, spring, and fall months. They could also reduce Delta outflows in the summer months, which could lead to increased salinity in the western Delta at those times.

The Delta Reform Act calls for the Delta Plan to promote options for new and improved infrastructure relating to water conveyance in the Delta, storage systems, and for the operation of both to achieve the coequal goals (Water Code section 85304). The DEIR states:

Construction [and operation] of large surface water storage reservoirs..., or water supply reliability actions that modify operations of the [state and federal water projects], or other water systems, might affect special-status species depending on the extent to which the operation influences the flows in connecting rivers or streams. Changes in surface water storage operations could influence the timing and magnitude of flows and water temperature in downstream water bodies used by special-status species. Changes in flow in rivers that are tributary to the Delta might also influence the flow, currents, and temperature and salinity gradients in the Delta. These changes could reduce the quality and suitability of aquatic habitats for special-status fish species such as delta smelt.

The draft Delta Plan does not include any regulatory policies or recommendations regarding Delta conveyance because conveyance options are currently being analyzed separately through the Bay Delta Conservation Plan (BDCP) process. However, the DEIR briefly summarizes current proposals in the BDCP. The DEIR states:

Physical improvements associated with BDCP-related ecosystem restoration and enhancement and large Delta conveyance facilities (including canals, forebays, and intakes/diversions), in addition to the Delta Plan, could potentially increase interference with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors.

## Response to comment ST44-5

The Delta Plan is intended to further the achievement of the co-equal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The needs of the Bay, and actions that advance its protection, restoration, and enhancement, are outside the scope of this project.

The Bay Plan and Marsh Plan policies call for adequate freshwater inflow to the Bay and Suisun Marsh (i.e., Delta outflow). Bay Plan findings state, in part, that "conserving fish, other aquatic organisms and wildlife depends, among other things, upon availability of ...proper fresh water inflows, temperature, salt content, water quality, and velocity of the water."

Water Supply and Quality Finding 2 in the Marsh Plan states, "Today the most important factor in Marsh water quality is salinity. Slough salinities are presently determined by fresh water inflow, which dilutes the saltwater carried into the Marsh by tidal action from the ocean. The most important source of fresh water inflow to the Suisun Marsh is the outflow from the Sacramento-San Joaquin River Delta."

The Marsh Plan recognizes that the Suisun Marsh, located where salt water and fresh water meet and mix, contains "the unique diversity of fish and wildlife habitats characteristic of a brackish marsh."

Marsh Plan policies state, in part:

Water quality standards in the Marsh should be met by maintaining adequate inflows from the Delta.

To address these policies, we recommend that the Final EIR include analysis of the fresh water flow needs of the entire estuary, not just the Delta. This includes the need for peak flows that transport sediment and nutrients to the Bay, increase mixing of Bay waters, and create low salinity habitat in the Suisun Marsh, Suisun Bay, San Pablo Bay and the upper part of central San Francisco Bay. The potential impacts on freshwater flows of new water infrastructure for both storage and conveyance should be included in this analysis.

**Climate Change.** The Bay Plan requires the design and evaluation of any tidal restoration project to include an analysis of the effect of relative sea level rise. The DEIR states:

Effects of sea level rise on tidal marsh and riparian vegetation depend on the potential for sediment and organic accretion (material buildup), and on the opportunity for the marsh to expand landward, while the shoreline erodes (Orr et al. 2003). Substrate accretion in freshwater tidal marshes is expected to be able to keep pace with at least moderate levels of sea level rise due to organic accretion, but brackish and salt marshes are more dependent on sediment supply for accretion to keep pace with sea level rise (Orr et al., 2003; Callaway et al., 2007). Overall, a loss of tidal marshes is expected, because in many cases an opportunity for landward migration of the marsh does not exist.

The Final EIR should note that risk of levee breaches and wetland habitat loss in the Suisun Marsh will increase over time due to accelerating sea level rise and high rates of subsidence in the managed wetlands. Restoration of managed wetlands that are not yet highly subsided would create opportunities for tidally restored wetlands to accrete sediment and eventually support tidal marsh. Restoration sites around the edge of the Suisun Marsh may have the potential for sea level rise resiliency, if they are allowed to flood adjacent uplands over time so that wetlands can migrate landward. Conversely, the Final EIR should discuss the risks to viability of proposed restoration efforts posed by climate change, including sea level rise.

## Response to comment ST44-6

Please refer to response to comment ST44-4 regarding the EIR's approach to potential impacts related to new or modified water supply and storage facilities in the Delta watershed. The potential impacts of new conveyance facilities around or through the Delta, such as those that may be contemplated through the Bay Delta Conservation Program (BDCP), are discussed in Section 23 of the Draft Program EIR, although they are not considered to be impacts of this Project. The proposed BDCP is a reasonably foreseeable future project that is not part of the Delta Plan. It is being evaluated by the Department of Water Resources as the CEQA lead agency. The cumulative impacts of the proposed Delta Plan, in combination with the impact of the proposed BDCP, are described in EIR Sections 22 and 23. Please refer to Master Response 1.

## Response to comment ST44-7

The recommendation that the EIR describe the role of climate change in the ongoing environmental decline in the Delta, including flood risks and habitat loss, is noted; these issues are discussed in Chapters 7 and 4 of the Final Draft Delta Plan. The potential effects of sea level rise on ecosystem restoration projects in the Delta (the term as used in the Draft Program also include Suisun Marsh) are discussed in subsection 21.4.3.2.3 (page 21-11) of the Recirculated Draft Program EIR.

**Minimize Harmful Effects to the Bay.** The proposed plan would need to be consistent with all applicable Bay Plan and Marsh Plan policies. Therefore, the Final EIR should address other applicable Bay Plan policies, including a discussion about the Commission's regulatory requirements governing the protection of the Bay's natural resources, including fish, other aquatic organisms, and wildlife, and certain habitat needed for their protection, including tidal flats and marshes and subtidal areas. The Bay Plan policies regarding subtidal areas state, in part, that dredging projects in such areas should be thoroughly evaluated to determine the local and Bay-wide effects such projects would have on bathymetry, tidal hydrology and sediment movement, fish, other aquatic organisms and wildlife; aquatic plants; and the introduction and spread of invasive species. The Bay Plan policies on fish, other aquatic organisms, and wildlife, state that marshes, mudflats, and subtidal habitat should be "conserved, restored, and increased." According to the Bay Plan policies on tidal marshes and tidal flats, and subtidal areas, all projects subject to Commission consideration should also be sited and designed to minimize or avoid adverse resource impacts at these areas. Furthermore, the Commission must consult with and give appropriate consideration to the state and federal resource agencies, and not authorize any project resulting in the "taking" of a listed species unless the appropriate authorization has been issued by the resource agencies. ST44-8

**Mitigation.** In the event that projects and activities described in the Delta Plan that take place within the Commission's Bay, Primary Management Area, or certain waterway jurisdiction, or federal activities described in the Delta Plan that will affect the coastal zone as defined in the Commission's federally approved coastal management program, would result in adverse environmental impacts on San Francisco Bay, including the Suisun Marsh, that cannot be avoided, mitigation measures will be required. The Commission's policies regarding mitigation state, in part, that "projects should be designed to avoid adverse environmental impacts to [the Bay]" and, further, that "[w]henver adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable...[and] measures to compensate for...impacts should be required." ST44-9

Thank you for the opportunity to comment on this DEIR. If you have any questions regarding this letter or the Commission's policies, please call me at (415) 352-3660 or email me at [jessicad@bcdc.ca.gov](mailto:jessicad@bcdc.ca.gov). ST44-10

Sincerely,



JESSICA DAVENPORT  
Coastal Planner

JD/gg

By U.S. Mail and e-mail ([circcomments@deltacouncil.ca.gov](mailto:circcomments@deltacouncil.ca.gov))

### *Response to comment ST44-8*

Bay Conservation and Development Commission policies are discussed on pages D-24, D-25, D-28, D-55, D-56, D-76, D-81, D-118, and D-153 of the Draft Program EIR. Under Public Resources Code section 29501(b) and Government Code section 66632(f), and any project encouraged by the Delta Plan that is within BCDC jurisdiction will be required to be consistent with all relevant Bay Plan and Marsh Plan policies. This legislative mandate ensures that there will no conflict between projects under the Delta Plan and the plans administered by BCDC.

### *Response to comment ST44-9*

Comment noted. Please refer to the response to comment ST44-8.

### *Response to comment ST44-10*

Comment noted.

# ST45 Dan Logue

*E-mailed from the desk of*



February 2, 2012

Ms. Terry Macaulay, Interim Chief Deputy, Executive Officer  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

RE: Draft Delta Plan EIR  
[ejrcomments@deltacouncil.ca.gov](mailto:ejrcomments@deltacouncil.ca.gov)

Dear Ms. Macaulay,

The recent draft environmental impact report issued by the Delta Stewardship Council goes beyond the legal scope of its authority by including both the Feather and Sacramento River watersheds in the Delta Plan. This is outside the original charter of the Delta Stewardship Council.

This increase to the scope of the Delta restoration to include "enforceable flow requirements" could have significant negative impact on upstream watersheds and water users. Language from the original Cal Fed Bay Delta Record of Decision mandates that no redirected negative impact should occur. Impact could include a loss of flood protection, area of origin water rights, water to agriculture, recreation and of critical salmon habitat. The Delta Stewardship Council's attempt to expand the control of the Delta Plan to include the Sacramento and Feather River Watersheds is outside the authority of the Delta Stewardship Council's mandate to protect the Delta. ST45-1

The stewardship of the Delta is critical to all Californians, but to sacrifice the environmental and economic health of other watersheds to achieve that goal will harm all Californians. Any attempt by the Delta Stewardship Council to undercut and weaken area of origin water rights is unacceptable.

Sincerely,

Dan Logue  
Assemblyman, 3<sup>rd</sup> District

## Response to comment ST45-1

Regarding the geographic scope of the Delta Plan, please refer to Master Response 1. Regarding the impacts of the Delta Plan polices and recommendations related to flows in the Delta, please refer to Master Response 5.

# ST46 DPC

STATE OF CALIFORNIA – THE RESOURCES AGENCY

EDMUND G. BROWN, Jr., Governor

## DELTA PROTECTION COMMISSION

2101 Stone Blvd., Suite 210  
West Sacramento, CA 95691  
Phone (916) 375-4800 / FAX (916) 376-3962  
Home Page: [www.delta.ca.gov](http://www.delta.ca.gov)



Central Coast County Board of Supervisors

Sacramento County Board of Supervisors

San Joaquin County Board of Supervisors

Solano County Board of Supervisors

Yolo County Board of Supervisors

Cities of San Joaquin County

Cities of Contra Costa and Solano Counties

Cities of Sacramento and Yolo Counties

Central Delta Reclamation Districts

North Delta Reclamation Districts

South Delta Reclamation Districts

Business, Transportation and Housing

Department of Food and Agriculture

Natural Resources Agency

State Lands Commission

February 2, 2012

Phil Isenberg, Chairman  
Delta Stewardship Council  
980 9<sup>th</sup> Street, Suite 1500  
Sacramento, California 95814

Dear Chairman Isenberg,

Attached are comments from the Delta Protection Commission in regards to the Delta Plan Draft EIR. In addition to the specific comments attached, two observations of the Draft EIR are as follows:

1. The proposed project's environmental superiority does not in itself demonstrate consistency with the co-equal goals as stated in the Delta Reform Act of 2009: "[T]he two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place" (Water Code Section 85054).

Within the context of the co-equal goals, in order for the proposed project to be the superior alternative it is necessary that it provides the greatest water supply reliability and Delta ecosystem benefits while enhancing the Delta as an evolving place. Using the California Environmental Quality Act (CEQA) framework, the EIR does not evaluate the alternatives along these other two dimensions of the Delta Reform Act. As such, the conclusion regarding the CEQA based environmental superiority of the proposed project is neither a necessary nor sufficient condition to identify the superior alternative. At a minimum these limitations of the Draft EIR are important to highlight in subsequent revisions of the document and ideally subsequent evaluation of alternatives will be augmented to include discussion of both water supply reliability and enhancement of the Delta as an evolving place.

2. The Draft EIR has adopted a static framework to analyze the impact of actions that in many cases will unfold over decades. This leads to potentially misleading constructs with significant implications for assessment of the proposed project's impacts. An example occurs in the review of Cultural Resources (Section 10) where the Draft EIR examines the impact of associated projects' construction and

## Response to comment ST46-1

Please refer to Master Response 3.

## Response to comment ST46-2

Please refer to Master Response 2.

ST46-1

ST46-2

Phil Isenberg  
February 2, 2012  
Page Two

operation, but it does not examine the direct impact on cultural resources because of the project's restrictions on investment in agricultural activities, the legacy communities, and the levee system. These restrictions and associated underinvestment could thereby significantly degrade the Delta's cultural resources.

The importance attached to the development of the Delta Plan cannot be over emphasized, not only to achieve the coequal goals, but also to carry out the objective identified by the Legislature in the Delta Reform Act... "to do in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place".

Sincerely,

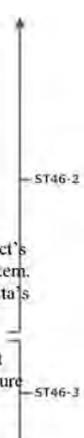


Don Nottoli  
Chair



Michael Machado  
Executive Director

Attachment



**Response to comment ST46-3**  
Comment noted.

## EIR Comments

### 1. Necessity and Sufficiency of Environmentally Superior Alternative

The November 2011 Draft Delta Plan Environmental Impact Report (Draft EIR) concludes that the proposed Delta Plan (Proposed Project) is the environmentally superior alternative among the six alternatives evaluated. Setting aside issues regarding assumptions that characterize the alternatives for the moment,<sup>1</sup> it is critical to note that the Proposed Project's environmental superiority does not in itself demonstrate consistency with the co-equal goals as stated in the Delta Reform Act of 2009: "[T]he two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place" (Water Code Section 85054).

Within the context of the co-equal goals, in order for the Proposed Project to be the superior alternative it is necessary that it provides the greatest water supply reliability and Delta ecosystem benefits while enhancing the Delta as an evolving place. Using the California Environmental Quality Act (CEQA) framework the EIR did not evaluate the alternatives along these other two dimensions of the Delta Reform Act. As such, the conclusion regarding the CEQA based environmental superiority of the Proposed Project is neither a necessary nor sufficient condition to identify the superior alternative. At a minimum these limitations of the Draft EIR are important to highlight in subsequent revisions of the document and ideally subsequent evaluation of alternatives will be augmented to include discussion of both water supply reliability and enhancement of the Delta as an evolving place.

### 2. Reflection of Economic Sustainability Plan

In the next revision of the EIR, the Proposed Project should incorporate the Delta Protection Commission's Economic Sustainability Plan for the Sacramento-San Joaquin (ESP). The subsections on Flood Risk Reduction (Section 2.2.4) and Protection and Enhancement of the Delta as an Evolving Place (Section 2.2.5) need particular attention in this regard. While the Draft EIR includes a description of some recommended actions from the ESP in Section 2.2.5, it is overwhelmingly focused on the California State Parks' *Recreation Proposal for the Sacramento-San Joaquin Delta and Suisun Marsh*. As a result, throughout the Draft EIR there is an assertion that preserving and protecting the Delta as an evolving place can be achieved by modest infrastructure and retail development for recreation and tourism. This is not a finding that is tenable with the ESP's analysis. While development of recreation and tourism infrastructure is an important component in the ESP it is not and should not be the sole focus of the Delta Plan in preserving and protecting the Delta as an evolving place.

Nonetheless, the Draft EIR propose and evaluates this constrained perspective throughout: "[T]he Proposed Project seeks to protect and enhance the unique cultural, recreational, natural resources, agricultural values of the California Delta as an evolving place by encouraging various actions, which if taken, could lead to construction and/or operation of: 1) Gateways, bike lanes, parks, trails, and marinas and facilities to support wildlife viewing, angling, and hunting opportunities (construction, maintenance, and use) 2) Additional retail and restaurants in legacy towns to support tourism (construction and use)" (page 2A-52). The ESP clearly highlights the limitation of this perspective and revision of the EIR is strongly encouraged to reflect its systemic perspective on preserving and enhancing the Delta as an evolving place.

<sup>1</sup> For further discussion of this issue see the section on Assessment and Credibility of Alternatives (5) below.

### Response to comment ST46-4

Please refer to Master Response 3.

### Response to comment ST46-5

The Draft Program EIR was prepared prior to completion of the Delta Protection Commission's Economic Sustainability Plan. This is a comment on the project, not on the EIR. The Final Draft Delta Plan and the Revised Project evaluated in the Recirculated Draft Program EIR addresses information from the adopted Economic Sustainability Plan. See also Master Response 2.

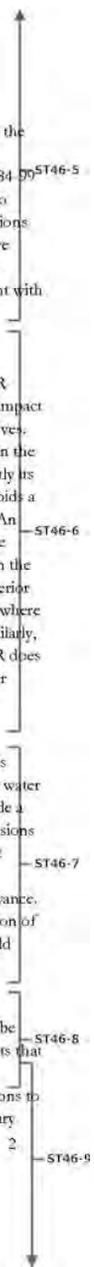
Furthermore, it is suggested that the ESP also be used to inform the Delta Plan and the associated subsection in the Draft EIR on Delta Flood Risk Reduction (Section 2.2.5). The ESP has identified systemic benefits for water conveyance, ecosystem restoration, and the Delta as a place by building and maintaining all Delta levees to a PL84 standard and for prioritized development of select levees to a higher Delta specific 'fat levee' standard in order to reduce the threat posed by floods, earthquakes and possible sea-level rise. By emulating the ESP's recommendations on levees, the Delta Plan would significantly address the need for an aggressive program to maintain and improve Delta levees in the face of hazards posed by floods, earthquakes and possible sea-level rise beyond that which is currently in the Proposed Project. In this regard, it is important to note that the ESP's conclusions are consistent with those reached in the Delta Risk Management Strategy Phase Two study.

### 3. Analysis of Impacts

In the Draft EIR, the BDCP is discussed in Section 23, but it is evaluated as a cumulative project. The Draft EIR identifies a range of alternative concepts and proposals associated with the BDCP that would have a significant impact on the Delta, but these are considered as separate and distinct from the Proposed Project and evaluated alternatives. BDCP is the leading effort in the Delta to provide water supply reliability, but the analogous projects evaluated in the Draft EIR are in no way comparable to the twin tunnel 15,000 cfs isolated conveyance proposal which is currently its leading alternative conveyance proposal. Ignoring this in the analysis of the Proposed Project fundamentally avoids a critical component. Impacts on several resources will be significantly impacted under current BDCP proposals. An example of this type of impact would be found in the discussion of impacts on Water Resources (Section 3). The Proposed Project reports decreased reliance on the Delta will lead to increased water availability to water users in the Delta (Impact 3-3a, page 3-82). However, this conclusion does not account for existing water rights that are superior to contractual rights and the potential water quality impacts generated by an BDCP isolated conveyance facility, where evidence suggests significant changes in salinity profiles across the Delta, but particularly in the south Delta. Similarly, with regard to BDCP ecosystem proposals and water quality degradation (Impact 3-1b, page 3-83) the Draft EIR does not discuss impacts from increased sedimentation resulting from the tidal marsh habitat potentially created under BDCP ecosystem proposals and the negative impact that habitat may have through siltation on municipal water intakes and shipping channels in the Delta.

Separate from the BDCP, there is a general lack of discussion in the Draft EIR of impacts from the energy needs associated with water conveyance. The Proposed Project reports on air quality conflicts as a result of actions for water supply availability under Air Quality in Section 9 (Impact 9-1a, page 9-18). However, these impacts do not include a discussion air quality impacts generated by the energy that provides water supply reliability. Including these emissions is a seemingly significant component of pollutant exposure as well (Impact 9-3a, p. 9-20), which at present is not discussed. Related to the same point, in the discussion of Utilities and Service Systems (Section 20) there is no discussion of the energy and associated water requirements to power the pumps that may be required for conveyance. Lastly, under the discussion of Climate Change and Greenhouse Gas Emissions (Section 21) there is no discussion of the energy and associated water requirements for pumping and conveyance. Inclusion of these real impacts would likely generate further significant impacts that are not at present discussed.

There are other areas in the Draft EIR where additional analysis of impacts seems warranted. These include the analysis of Transportation, Traffic, and Circulation (Section 19) where the analysis asserts that no impact would be made on the regional Congestion Management Plans (Section 19.4.3). However, this seemingly disregards impacts that might occur in goods transport alleviation from the Marine Highway. In the analysis of Public Service impacts (Section 17) evidence from the ESP would suggest that impacts on demand for public services as a result of actions to protect and enhance the Delta as an evolving place (Section 17.4.3.5) should be differentiated between the primary



### *Response to comment ST46-6*

Please refer to Master Response 1.

### *Response to comment ST46-7*

Please refer to Master Response 5.

### *Response to comment ST46-8*

The existing plans for the Ports of Stockton and Sacramento have considered potential increase in traffic due to implementation of the adopted Marine Highway project. Implementation of projects encouraged by the Delta Plan would not increase navigation, truck, or rail traffic beyond what it projected in existing plans.

### *Response to comment ST46-9*

The discussion of potential impacts on page 17-17 of the Draft Program EIR includes a statement that satellite police, fire, and emergency facilities may be warranted, which is intended to encompass potential impacts of projects encouraged in all parts of the Delta. Needs will be evaluated on a project-by-project basis, and projects within the primary zone may indeed have different conclusions (and mitigation requirements) than projects within the secondary zone. The determination of potential impacts being less-than-significant on page 17-37 of the Draft Program EIR was based upon evaluation of similar projects (North Delta Flood Control and Ecosystem Restoration Project, page 17-36, lines 40 through 44 of the Draft PEIR) that did not result in construction of housing and would not generate additional population living in the area, additional students or increased demands on schools.

and secondary zones. This is necessary because impacts on the primary zone are likely to be significant in the context of the limited availability public services in that region and with respect to first responders in particular.

#### 4. Analysis of Dynamics

The Draft EIR has adopted a static framework to analyze the impact of actions that in many cases will unfold over decades. This leads to potentially misleading constructs with significant implications for assessment of the Proposed Project's impacts. An example occurs in the review of Cultural Resources (Section 10) where the Draft EIR examines the impact of associated projects' construction and operation, but it does not examine the direct impact on cultural resources because of the Project's restrictions on investment in agricultural activities, the legacy communities, and the levee system. These restrictions and associated underinvestment could thereby significantly degrade the Delta's cultural resources. Another example can be found in the review of Mineral Resources (Section 13) in which the Draft EIR examines impacts of the Proposed Project and the alternatives' across their construction and operation, but it does not examine the impact on mineral resources because of restrictions on investment in and operation of mineral resource extraction activities. While mitigation discusses the need to ensure access to existing and active mineral resource extraction sites it does not discuss potential loss of access to future sites that would otherwise be viable if not for these restrictions nor the potential loss (albeit counterfactual) of technologies that may otherwise facilitated access to those resources. Lastly, the analysis in the Draft EIR assumes proposed funding and maintenance sufficiency in the future. Given financial uncertainties highlighted as a result of the recent recession this is an assumption that at a minimum should be explicit in the analysis. The consequent significance to relaxing this assumption is illustrated in the discussion of Hazard and Hazardous Materials in Section 14. The Draft EIR in Section 14 assumes and presents an image of vector habitat generation from ecosystem restoration to be unlikely given potential mitigation measures. However this assumes a funding and maintenance dynamic that has not been previously practiced in the Delta and should be mentioned as a potentially significant long-term hazard from ecosystem restoration (Impact 14-3b, p. 14-24).

#### 5. Assessment and Credibility of Alternatives

The process by which the five alternatives to the 5<sup>th</sup> Staff Delta Plan ("the Proposed Project") were developed is explicit and detailed in Section 2.3.1, but the assumptions that characterize the alternatives create an impression of predetermination in favor of the Proposed Project. Consideration of the project impacts and mitigation occupies 33 pages in the Draft EIR but consideration of the five alternatives occupies only 10 pages in total. This discrepancy largely results from the selected alternatives being variations of the Proposed Project and the differences in the impacts being discussed collectively instead of on a point-by-point basis like the Proposed Project. We would encourage revising the alternatives to more fully differentiate perspectives and to examine each alternative on a point-by-point basis or at least add a discussion where the Proposed Project is similarly discussed collectively. In this regard, we suggest that the revised EIR contain alternatives that better reflect the stakeholders whom they are held to represent.

The issue and implications of these shortcomings in the alternatives is demonstrated in Section 5 on Delta Flood Risk. On the basis of the qualitative assessments made in the Draft EIR, there is essentially no difference between the Proposed Project and the alternatives in terms of Delta Flood Risk. Nonetheless, the Draft EIR concludes that the Proposed Project is superior to the alternatives because they all focus levee investments on only part of the Delta and Alternatives 1A and 1B focus prevention of encroachments into floodplains in only limited parts of the Delta. Seemingly minor modifications to either Alternative 2 or 3 would make them superior to the Proposed Project, but these have not been considered.

ST46-9

ST46-10

ST46-11

### *Response to comment ST46-10*

Please refer to Master Response 2.

### *Response to comment ST46-11*

As described in Master Response 3, the alternatives were developed to evaluate a range of potential actions that could be encouraged by the Delta Plan.

Lastly, there is a notable minority of social scientists in the team that developed the Draft EIR. While acknowledging the importance of the team's contribution thus far, it would seem beneficial for subsequent revisions to include additional expertise in the social sciences in order to ensure the Proposed Project and its alternatives fully reflect the co-equal goals.

#### 6. Miscellaneous Issues

- Section 10 – On page 10-13 (line 20-22) Walnut Grove is described as a community that caters primarily to tourism and recreation with encroaching suburban growth altering its agricultural character. While tourism is an important aspect of the Walnut Grove economy, we would encourage future version of the EIR to consult the ESP regarding the character of Walnut Grove today as there is a marked absence of suburban growth and agriculture remains a mainstay of its economy. ST46-12
- Section 10 – On page 10-19 (line 36) Sonora is described as a community in the Sacramento Valley. ST46-13
- Section 19 – Discussion of the Ports and Deep Water Channels in 19.3.2.4 would benefit from data on tonnage at the respective ports. ST46-14
- Section 19 – Discussion of the Airports in 19.3.2.5 identifies only two airports in the Delta, but the ESP identifies 11 general aviation airports within the Delta (ESP Section 9.3.4 Table 47). ST46-15
- Section 20 – Discussion of the Environmental Setting (Section 20.3) does not include mention of the important gasoline and aviation fuel pipelines that pass through the Delta to depots for distribution throughout Northern California and Nevada. ST46-16

### ***Response to comment ST46-12***

Comment noted. The consulting team that prepared the Draft Program EIR included several individuals with bachelor and master degrees in sociology, urban planning, urban studies, environmental planning, regional planning, geography, business economics, finance, and journalism.

### ***Response to comment ST46-13***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### ***Response to comment ST46-14***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### ***Response to comment ST46-15***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### ***Response to comment ST46-16***

The discussion in Section 19.3.2.5 on page 19-14 of the Draft Program EIR correctly describes that two public regional airports are located in the Delta (Rio Vista Municipal Airport and Borges-Clarksburg Airport). Other airport facilities located in the Delta include three private facilities that require permission before use (Las Serpientas, Spezia, and Funny Farm airports) and the Lost Isle Seaplane Base, which provides public use for seaplane operations. The private facilities were noted in the discussion but not depicted in Figure 19-4. Four airports are located adjacent to the Delta boundary: Tracy Municipal Airport, Kingdon Airpark, New Jerusalem Airport, and Byron Airport (parts of the Byron Tract Airport properties are within the Delta). These airports are shown on Figure 19-4. The 33 Strip Airport is located outside the Delta and to the west of New Jerusalem Airport and is not included in Figure 19-4 because it is for private use.

### ***Response to comment ST46-17***

As described in Section 20.4.1 of the Draft Program EIR, the Utilities and Service Systems analysis focuses on whether implementation of the Proposed Action and alternative could require new or physically altered municipal utility systems, the construction or operation of which could

cause significant environmental impacts. Other types of infrastructure present in the Delta but unrelated to municipal utility demands (e.g., gasoline and aviation fuel pipelines) are not discussed in Section 20. Section 20, however, does include Impact 20-6: Create a Public Health Hazard from Utility Disruption. This impact category is general in terms of what types of utility conflicts could create the most severe public health hazards, but it specifically mentions natural gas pipelines.

# ST47 DWR

State of California

California Natural Resources Agency

## Memorandum

Date: FEB 02 2012

To: Joe Grindstaff  
Executive Officer  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, California 95814

From: Dale K. Hoffman-Floerke  
Deputy Director  
Department of Water Resources

Subject: Staff Comments on the Draft Delta Plan Program Environmental Impact Report (PEIR)  
Dated November 4, 2011

This memorandum transmits the Department of Water Resources' (Department) staff comments on the Draft Delta Plan PEIR, which is based on the Fifth Staff Draft of the Delta Plan released by the Delta Stewardship Council (DSC) on August 2, 2011.

The current draft of the Delta Plan consists of 12 binding policies and 61 nonbinding recommendations and forms the basis of the 'Proposed Project' analyzed in the draft PEIR, which describes five alternatives to the Proposed Project. The draft PEIR analyzes the potential environmental impacts associated with the Proposed Project and each of the alternatives as required by the California Environmental Quality Act (CEQA).

Department staff appreciates the magnitude and complexity of the task to prepare a PEIR for the Delta Plan. Since there is not a well-defined list of projects associated with the development of the Delta plan, it makes the analysis of environmental impacts extremely difficult. Overlaying the complexity of the Delta itself further increases the level of difficulty in conducting the environmental analysis and the subsequent preparation of text to provide a document in a format that can be understood by the general public. This PEIR represents a substantial amount of work and provides a comprehensive resource on many issues in the Delta.

Following are the comments by Department staff; they are organized by chapter, page and line number to facilitate the DSC's review and understanding of these comments. As in the past, Department staff will continue to be available to respond to questions regarding Department reports, analyses, and comments provided in this attachment.

ST47-1

*Response to comment ST47-1*  
Comment noted.

Joe Grindstaff  
FEB 02 2012  
Page 2

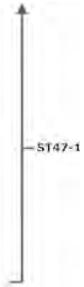
If you have any questions regarding the Department's comments, please contact me, or your staff can contact Robert Yeadon at (916) 651-9823.



Dale K. Hoffman-Floerke  
Deputy Director  
(916) 653-8045

Attachment

cc: Kamyar Guivetchi  
Art Hinojosa  
Kathy Kelly  
Cathy Crothers



*No comments*

- n/a -

California Department of Water Resources

Staff Comments on the Draft Delta Plan  
Program Environmental Impact Report  
November 2011  
(February 2, 2012)

General Comments:

The twelve binding policies described in the Fifth Staff Draft of the Delta Plan form the essential framework of the Proposed Project. Department staff believes that there should also be an analysis specific to these twelve policies since they will have the force and effect of law. Instead, the Draft Delta Plan Program Environmental Impact Report (PEIR) analyzes the impacts of the perception of what the Delta Plan regulatory policies and recommendation will do and the consequential impacts of these policies and recommendations in very general terms. The Department understands the complexity of this undertaking; however, additional effort should be taken to analyze the individual impacts associated with the specific policies proposed in the Delta Plan.

ST47-2

Due to the generalized nature of the impact analysis many sections of the EIR are repetitious. This repetition makes it difficult for the reader to focus on the concerns relevant to each subsection and makes it difficult to provide a comprehensive review.

Some of the more significant concerns of the Department's staff are as follows:

- Significant data errors. For example, the estimates of lands irrigated with water from the Delta (700 million acres versus 3 million acres);
- Inconsistencies and errors in the use of technical terms;
- Some of the California Environmental Quality Act (CEQA)/National Environmental Policy Act (NEPA) documents relied upon for analysis in this document may not be sufficiently relevant to base an analysis on;
- Numerous unsupported conclusions in the impact analysis;
- Inadequate discussions on the Cumulative Impacts; and
- Inadequate discussions in the Comparison of Alternatives.

ST47-3

Finally, there is no conclusion provided in the document. The specific comments below demonstrate and/or elaborate on the above points.

EXECUTIVE SUMMARY

Page ES-2, first footnote

The Department suggests that a word-for-word copy of the relevant part of the California Water Code be used for this footnote:

ST47-4

*Response to comment ST47-2*

Please refer to Master Response 1.

*Response to comment ST47-3*

Comment noted.

*Response to comment ST47-4*

Comment noted.

Comments on the Draft Program EIR  
For the Delta Plan  
Department of Water Resources

85057.5. (a) "Covered action" means a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

- (1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.
- (2) Will be carried out, approved, or funded by the state or a local public agency.
- (3) Is covered by one or more provisions of the Delta Plan.
- (4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.

The summary definition of "covered action" that is provided is inaccurate and could mislead some readers. The Water Code also clarifies that there are seven types of plans, programs, projects, or activities that are not considered "covered actions." A link to the Water Code section which contains these exceptions, as well as more information on covered actions, would be useful to readers. (<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=wat&group=85001-86000&file=85050-85067.>)

Page ES-2, second footnote

For clarity and consistency DWR recommends that the phrase "... the Delta Plan will be successful ..." be changed to "...the Delta Plan will be successfully implemented ..."

Page ES-3, fourth paragraph

For clarity and consistency DWR recommends that the phrase "... through regional self-reliance ..." be changed to "...through increased regional self-reliance ..."

Page ES- 3, end of Paragraph 6

For clarity and consistency DWR recommends that the phrase "... Delta as a place" be changed to "... Delta as an evolving place."

#### Summary of Environmental Impacts

Page ES-10, Table ES-1

The Department recommends that an introductory/explanatory paragraph be inserted above Table ES-1. The only description of the table is provided on page ES-7. A description of the purpose of the table, what the various column headers indicate and any conclusions that are drawn from information in the table would be helpful. It would also benefit the reader to have an upfront explanation of the various abbreviations used in the table. As currently drafted there is not an explanation of the abbreviations until Page 56 of the Executive Summary.

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ST47-4

ST47-5

ST47-6

ST47-7

ST47-8

### *Response to comment ST47-5*

The text on page ES-2 of the Draft Program EIR referred to in this comment is consistent with the assumptions used in preparation of the EIR. The EIR assumes that other agencies will be encouraged to implement actions by recommendations in the Delta Plan, as explained in Master Response 2.

### *Response to comment ST47-6*

The text on page ES-3 of the Draft Program EIR referred to in this comment is consistent with Water Code section 85021 ("improved regional supplies").

### *Response to comment ST47-7*

The text on page ES-3 referred to in this comment is consistent with Water Code section 85301(b)(1) ("Delta as a place").

### *Response to comment ST47-8*

Abbreviations were added to the first page of the table in the Recirculated DEIR to describe the associated determination of significance of impacts.

**Section 2A Proposed Project and Alternatives**

**2.1 Overview of the Delta Plan**

Page 2A-1, lines 10-14

The text states that the Delta Plan functions as a strategic document and provides guidance and recommendation to cities, counties, State, federal and local agencies and that the Council will work with these agencies to promote and coordinate implementation of these recommendations. However, the Delta Plan is much more, especially with respect to implementation of consistency determinations for covered actions. The DSC will become a regulatory agency and will have direct authority over any decisions deemed to be covered actions.

ST47-9

The Department is concerned with the implementation of consistency determinations on covered actions as stated in our comments on the Fifth Staff Draft of the Delta Plan. It appears that the DSC is interested in the regulation of many of the Department's activities including water management, water transfers, and levee rehabilitation. Numerous laws, regulations, negotiated settlements, and policies already exist that govern the many complex issues in the Delta. Department staff question the 'value added' of an additional regulatory process, especially if it is added on to the very end of a difficult permitting process and environmental review. This new process will likely add to project delays and costs in the Delta, including those projects specifically recommended by the DSC. The Department provided an estimate of costs and staff time associated with implementation of the Delta Plan. This CEQA process should provide a more thorough analysis of the impacts to land-use and planning of other State and local agencies to provide full information to the decision makers.

**2.2.2.2.1 Floodplain Restoration**

Page 2A-30, lines 8-39, Dredging

The discussion on dredging is very rudimentary. There are several Regional Board orders regulating dredging activities in the Delta. Some orders are for the maintenance dredging activities for the deep ship channels and another is a general order for smaller dredging projects. The existing orders would have little to do with any dredging activities for floodplain restoration. The discussion that follows illustrates a lack of understanding of dredging in the Delta. For example, the text in lines 15 and 16 discusses the use of dredges on the landside of the levee.

ST47-10

**2.2.4.2 Overview of Flood Risk Reduction in the Delta Programs**

Page 2A-47, lines 14-17

The text states that the: "Proposed Project encourages DWR to complete by January 1, 2013, *A Framework for Department of Water Resources Investments in*

ST47-11

***Response to comment ST47-9***

Section 6 of the EIR considers the Delta Plan's physical environmental impacts related to land use and planning, in the manner directed by Appendix G to the CEQA Guidelines. To the extent that this comment concerns the Delta Stewardship Council's regulatory role, it is a comment on the project, not the EIR.

***Response to comment ST47-10***

Comment noted.

***Response to comment ST47-11***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

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*Delta Integrated Flood Management (DWR 2011b) to guide investments between 2010 and 2030 to improve integrated flood management in the Delta for maintenance, facility improvements, new structural facilities and non-structural solutions, habitat enhancement, emergency preparedness with response and recovery, subsidence reversal, and studies (RR P4 and RR R5)."* This line softens the actual language of the policy that states if DWR does not complete the strategy by Jan. 1, 2013 the Council will provide one as indicated in the following text:

Appendix C, C-6, RR P4

This Policy states that DWR needs to complete a Framework for Department of Water Resources Investments in Delta Integrated Flood Management by January 1, 2013. If DWR does not complete this framework document the Delta Stewardship Council will define a strategy for State investments.

### 2.2.5.1 Overview of the Economic Sustainability Plan

Page 2A-53, lines 1-5

The Economic Sustainability Plan has been completed since the drafting of this CEQA document. This Plan did recommend that Delta levees be brought up to the PL 84-99 standard. However, as the Department has stated in other correspondence on this subject, we do not believe this would comport with the Delta Plan's requirement to prioritize levee investments in the Delta or Section 85306 of the Water Code.

### 2.3.2.3 Water Quality Improvement

Page 2A-88, lines 1-25

The Department recommends inclusion of a discussion of the impacts to water quality associated with agricultural drainage both outside and inside the Delta. This is an important topic that should be addressed in this document.

### 2.4 Organization of Resource Sections

Page 2B-9, Table 2B-2

Under the heading of Potential Facilities or Actions the term 'Less than Proposed Project' is used. It is not clear what 'LESS THAN PROPOSED PROJECT' means. Does this mean that under the No Project Alternative there would be fewer projects than the Proposed Project or fewer impacts or something else? Again, there is little description provided for what appears to be an important table. This needs to be clarified. Unless the Delta Plan results in a significant amount of money being made available for projects, the Department would disagree that there would be fewer projects under the No Project Alternative.

## Response to comment ST47-12

The Economic Sustainability Plan was forwarded to the Council in January 2012.

## Response to comment ST47-13

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

## Response to comment ST47-14

As described in Section 2A, the capitalized words included in Tables 2B-2 through 2B-6 are related to the relative extent of new facilities or changed environmental conditions under the No Project Alternative and Alternatives 1A, 1B, 2, and 3, respectively, as compared to the Proposed Project. The EIR assumes that other agencies will be encouraged to implement Delta Plan recommendations or specific actions due to Delta Plan policies and that other agencies will not necessarily be encouraged to implement these actions without the Delta Plan.

**SECTION 3 WATER RESOURCES**

**3.1 Study Area**

Page 1, line 27

The Department recommends that here and throughout the document, the phrase "areas outside of the Delta that use Delta water" should be changed to "areas outside of the Delta that use water exported from the Delta." The vast majority of the water exported from the Delta is water that comes from outside the Delta, much of it from reservoirs within the Delta watershed, but some of it from a reservoir outside the Delta watershed.

ST47-15

Page 3-1, lines 32 & 33

Rewriting this as, "Areas outside of the Delta that use Delta water exports include parts of the Tulare Lake, San Francisco Bay, and Central Coast Hydrologic Regions, plus parts of Southern California." would be more accurate.

ST47-16

Page 3-1, line 32

During some wet water years, such as this past one, some of the runoff from the Tulare Lake basin has flowed downstream into the Delta.

ST47-17

**3.3 Environmental Setting**

Page 3-3, lines 10 & 11

To be consistent with the language of Section 7 of this EIR, the phrase "adopting the proposed Delta Plan or implementing the alternatives" should be changed to "adopting the proposed Delta Plan and some of the projects it encourages, or else implementing one of the alternatives to the Delta Plan."

ST47-18

Page 3-3, lines 33 & 34

The text states that: "Precipitation is the source of 97 percent of California's water supply." Does this take into account groundwater?

ST47-19

**3.3.2 Overview of California Water Resources**

Page 3-4, lines 26-29

ST47-20

***Response to comment ST47-15***

The EIR consistently uses the term "Delta water" to include both water used within the Delta and water that is exported from upstream areas through the Delta.

***Response to comment ST47-16***

Please refer to response to comment ST47-15.

***Response to comment ST47-17***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

***Response to comment ST47-18***

Comment noted.

***Response to comment ST47-19***

As described in the California Water Plan Update 2009, precipitation includes both rainfall and snowfall that result in increased surface water flows and storage and groundwater storage. This report, which is used as the reference for the text in the Draft Program EIR that is referred to in this comment, also recognizes water supplies from outside of California, including surface water and groundwater inflows from Oregon, Mexico, and Colorado River watershed, and imported water from outside of California.

***Response to comment ST47-20***

Comment noted.

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This text should be clarified. Colorado River water was being diverted and transported to irrigate the Imperial Valley before the Hetch Hetchy system was used to send water to the Bay Area.

### 3.3.3.1 Surface Water Hydrology

Page 3-10, line 3

The statement that: "approximately 520,000 acres of Delta land is used for agriculture is out-of-date, and is significantly too high. The recently adopted Delta Protection Commission's Economic Sustainability Plan for the Sacramento-San Joaquin Delta states in its agriculture chapter that at present the "Total cropped acreage in 2010 was 423,727 acres, not including approximately 38,000 acres of grazing land."

### 3.3.3.4 Water Use and Infrastructure

Page 3-13, line 27

For clarity and accuracy purposes, the Department recommends that the phrase "Delta water is used by two-thirds of California's population" be changed to "water exported from the Delta helps to provide part of the municipal water supply for about two-thirds of California's population."

Page 3-13, lines 27 & 28

Water exported from the Delta makes up at least part of the irrigation water supply for about three million acres of California farmland. The EIR text states that: "The Delta also supplies water to more than **700 million acres of irrigated land** in various regions of California ..." As this number is drastically elevated, if the environmental impact analysis was made with the 700 million figure then the analysis needs to be reconducted to accurately account for the actual acreage of 3 million..

Page 3-13, lines 41 & 42

The sentence, "After local users, the major users of Delta surface water are the CVP and SWP" incorrectly implies that more Delta surface water is used in the Delta than is exported to either the CVP or SWP service areas.

### 3.3.4.1.3 Groundwater Hydrology

Page 3-19, 3-20

This section does not describe groundwater hydrology in the Delta itself. Delta groundwater is very complex and differs from the discussion provided for the Sacramento Valley. This is especially true for the subsided islands in the Delta. The

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ST47-20

ST47-21

ST47-22

ST47-23

ST47-24

ST47-25

## *Response to comment ST47-21*

In response to this comment, please see text change(s) in Section 5 in this FEIR.

## *Response to comment ST47-22*

Please refer to response to comment ST47-17.

## *Response to comment ST47-23*

In response to this comment, please see text change(s) in Section 5 in this FEIR.

## *Response to comment ST47-24*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

## *Response to comment ST47-25*

The Subsection 3.3.4.1.3 of the Draft Program EIR referred to in this comment describes the groundwater conditions upstream of the Delta. The Delta groundwater conditions are described in Subsection 3.3.3.3.

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analysis of water resources is incomplete without a description of the Delta groundwater system.

#### 3.3.4.1.4 Water Use and Infrastructure

Page 3-21, lines 20-22

The text states that: "The Red Bluff Diversion Dam is located approximately 2 miles south of the City of Red Bluff and diverts water from the Sacramento River into the Tehama-Colusa and Corning canals." This information is now out-of-date and should be revised.

The Red Bluff Diversion Dam is located about two miles south of the City of Red Bluff and diverted water from the Sacramento River into the Tehama-Colusa and Corning canals since 1966. However, the Red Bluff Diversion Dam gates were lowered for the last time in August of 2011, by Court Order, to protect the endangered Chinook Salmon, whose passage was impeded by the Dam. Diversion of water from the Sacramento River into the Corning and Tehama-Colusa Canals will be done by the existing pumping plants until the new Red Bluff Pumping Plant comes online in May of 2012.

Page 3-22, lines 13-35

A lot more has occurred in California during the past ten years involving water transfers and the Delta than is described here. Much of it relates to potential Project and Alternatives impacts on water resources. Additional analysis is needed on this complex and important subject.

#### 3.3.4.2 San Joaquin River Watershed

Page 3-22, lines 39 & 40

During some wet or very wet water years, some water from the "Tulare Lake watershed" flows into the San Joaquin River watershed.

Page 3-23, lines 26-31

This text should be updated with more recent information about the progress of the San Joaquin River Restoration Program.

#### 3.3.4.2.3 Groundwater Hydrology

Page 3-27, lines 39 & 40

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ST47-25

ST47-26

ST47-27

ST47-28

ST47-29

ST47-30

### *Response to comment ST47-26*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### *Response to comment ST47-27*

Comment noted.

### *Response to comment ST47-28*

Comment noted.

### *Response to comment ST47-29*

Due to the recapture of interim and restoration flows in the San Joaquin River Restoration Program, the effects on the Delta are minimal. The level of detail provided in the EIR is sufficient to provide context for the analysis of the Delta Plan's environmental impacts.

### *Response to comment ST47-30*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

The text states that: "In the 1990s, groundwater levels were so low that many wells were inoperable and many groundwater users were obligated to construct new deeper wells." This is an overstatement of all the wells in the region, relatively few actually became "inoperable." And lowering the bowls on existing wells, as well as sometimes deepening or refurbishing existing wells, was a far more common response to falling groundwater levels than was drilling entirely new wells.

#### 3.3.5.1.4 Water Use and Infrastructure

Page 3-43, lines 19-23

The Department requests that the time periods for the annual groundwater use estimates be included for reference.

Page 3-44, lines 1 & 2

Please note that residential metering programs are having success in cities such as Fresno and Bakersfield, where flat-rate water users are slowly being converted to metered users.

Page 3-44, lines 4-7

The large amount of water transferred from east-to-west during the 2007-09 water shortage and drought should be considered.

Page 3-45, lines 7-8

The text states that: "The Kern Water Bank (KWB) comprises 7,000 acres of recharge ponds that are filled with surplus SWP water that is allowed to infiltrate into the subsurface." Strictly speaking, there is no surplus SWP water delivered to the Kern County Water Agency (KCWA), as that term is used by the Department. Also, within the past 20 years, the majority of the water used to recharge the KWB has not been SWP water but rather Kern River water. Some CVP water has also been stored in the KWB. Also note that the KWB occupies about 20,000 acres.

#### 3.3.5.2 San Francisco Bay Area

Page 3-46, lines 13-15

The document states that: "The Bay Area has three distinct regions of land use (1) agricultural farmland in the north, (2) a dense urban area in San Francisco, and (3) a mix of urban and rural in the south." However, the Bay Area does not have "three distinct regions of land use." There are plenty of "dense urban areas" in area cities other than San Francisco, such as Oakland, Berkeley, San Jose, Santa Rosa, and so

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ST47-30

ST47-31

ST47-32

ST47-33

ST47-34

ST47-35

ST47-36

### ***Response to comments ST47-31 and 32***

This information was taken from the San Joaquin Valley Groundwater Basin Kern County Subbasin document, *in* addition to Bulletin 118-2003 developed by DWR (DWR 2006i, p. 4). No clear information on time periods for the annual groundwater use estimate is provided in this document.

### ***Response to comment ST47-33***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### ***Response to comment ST47-34***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### ***Response to comment ST47-35***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### ***Response to comment ST47-36***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

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on. There is also some remaining farmland in the east and southern edges of the Bay Area.

Page 3-46, lines 22 & 23

The text states that: "Rainfall amounts vary ... but are highest in the east-facing mountains (over 40 inches)." For the Bay Area, however, rainfall is greatest on the west-facing slopes of the area's mountains. With most rain-bearing storms coming in from the west and southwest, the east-facing slopes are often in the "rain shadow" of the mountains or ridges.

Page 3-48, line 10

The text states that: "Agricultural use [in the San Francisco Bay Region] covers 943,000 acres of irrigated farmland." This estimate appears to be based upon a survey, if so please provide the year in which the survey performed. The estimate seems too high. The Department's latest available preliminary estimate of irrigated farmland in the San Francisco Bay Hydrologic Region is only about 82,000 acres, for 2006.

It appears that the 943,000 acres estimate from this EIR chapter may be for a region that is much larger than the true Bay Area. It may also be out-of-date. It may also include non-irrigated agricultural land.

Page 3-48, lines 12 & 13

The text states that: "Urban [water] uses occur in San Francisco, Silicon Valley, and Sonoma County." However, major urban water use occurs in other parts of the Bay Area as well, such as the East Bay cities.

Page 3-49, lines 19 & 20

The document states that: "Over 30 reservoirs with a storage capacity of greater than 800,000 acre-feet capture and store water in the Bay Area." Does each reservoir have a capacity of more than 800,000 acre-feet, or is the 800,000 plus acre-feet estimate a total for all the reservoirs? The text should be revised to clarify this.

Page 3-49, line 27

The statement is made that: "For over a century, a majority of urban water supplied to the area has been from imported sources." This is inaccurate. Construction of O'Shaughnessy Dam was not finished until 1923. The Hetch Hetchy system was not completed until 1934. The Pardee Dam and Mokelumne Aqueduct were not completed until 1929.

Page 3-52, line 34

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ST47-36

ST47-37

ST47-38

ST47-39

ST47-40

ST47-41

ST47-42

### ***Response to comment ST47-37***

Comment noted.

### ***Response to comment ST47-38***

The Bay Area Water Agencies Coalition Integrated Regional Water Management Plan (BAWAC 2006a) includes the traditional nine Bay Area counties, as described on page 3-48 of the Draft Program EIR.

### ***Response to comment ST47-39***

Comment noted.

### ***Response to comment ST47-40***

The sentence referred to in this comment on page 3-49 refers to 30 reservoirs with a total storage capacity of more than 800,000 acre-feet.

### ***Response to comment ST47-41***

Comment noted.

### ***Response to comment ST47-42***

As of January 2011, SCVWD had about 85,000 acre-feet in the water bank (SCVWD 2011). Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

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The estimate made in the statement: "As of 2001, SCVWD had stored about 140,000 acre-feet in the water banking program" is ten years out-of-date. Please provide a more recent estimate.

Page 3-54, lines 4 & 5

The text states that reduction in surface storage from sedimentation affects existing water supply reliability. What about the Hetch Hetchy and Pardee Reservoirs? Do they also suffer from sedimentation problems?

#### 3.3.5.4 Southern California

Page 3-59, lines 33-37

The Department suggests that each section that describes a region in this chapter start with a small map of that region. This provides clarity to the reader regarding how the Council is defining each geographic area.

Page 3-67, line 46

What is meant by "early 1900s"? Does this refer to the 1900 to 1910 period, the 1900 to 1930 period, or something else? This is important for clarity reasons.

Page 3-68, line 1

The statement: "After the 1900s, Southern California gradually changed from an agricultural region ...." This should be changed to, "After 1910, ..." After the 1900s would be the 2000s.

Page 3-68, lines 9-11

Contrary to what is stated in the text, "Water conservation" is not one of the "water supply sources" listed in Table 3-11.

Page 3-69, lines 44 & 45

Neither the Coachella Valley WD nor the Imperial ID is within the South Coast HR (as shown in the map on Page 64) or the Southern California region (as described in this section.)

Page 3-72, line 4

### *Response to comment ST47-43*

The sentence referred to in this comment on page 3-54 of the Draft Program EIR is intended to refer to reduction in surface storage capacity in reservoirs within the Bay Area due to sedimentation.

### *Response to comment ST47-44*

Comment noted.

### *Response to comment ST47-45*

The referenced local supply sources were capable of meeting the demands until the first few years of the 1900s, when populations increased as much as tenfold in some areas (notably the City of Los Angeles). In response to the increased water demand, many agencies constructed large conveyance facilities to import water supplies to urban areas, such as the Los Angeles Owens Aqueduct that was completed in 1913 to convey water from Owens Lake to Los Angeles.

### *Response to comment ST47-46*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### *Response to comment ST47-47*

Comment noted.

### *Response to comment ST47-48*

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### *Response to comment ST47-49*

The stated figure of 758,000 acre-feet per year of groundwater recharge is an average taken between 1985 and 2004.

The statement is made that: "Currently, over 758,000 acre-feet per year of groundwater is recharged." For what time period is this estimate based on?

Page 3-73, line 45

In this three-paragraph subsection, titled, "Water Recycling and Water Conservation," there is not a single word about water conservation. Water conservation programs are quite widespread, and important, throughout Southern California. Please provide a description of the current and planned programs.

Pages 3-75 to 3-76, Table 3-15

There is a lot of valuable information in this well-crafted table.

### 3.4.2 Thresholds of Significance

Page 3-77, lines 1-16

This important subsection defines "Thresholds of Significance." As a criterion for determining when that threshold is crossed, in regard to water supply or water resources, it uses the word "substantially" four times:

1. "substantially degrade water quality",
2. "Substantially deplete groundwater supplies",
3. "or interfere substantially with groundwater recharge"; and
4. "Substantially change water supply availability ..."

However, this chapter fails to contain objective guidance for determining when a change or effect is large enough to be judged to be "substantial."

### 3.4.3.1 Reliable Water Supply

Page 3-77, lines 21 & 22

The document states that: "...the Delta Plan seeks to improve water supply reliability ...." This is true, but the Delta Plan seeks to do far more than just that. And the projects, programs, and actions which the Delta Plan encourages, which would do more than just "improve water supply reliability," also have impacts upon California water resources. The significance of those impacts should also be evaluated in this chapter.

Page 3-79, lines 39-42

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ST47-49

ST47-50

ST47-51

ST47-52

ST47-53

ST47-54

### *Response to comment ST47-50*

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### *Response to comment ST47-51*

Comment noted.

### *Response to comment ST47-52*

Regarding the EIR's thresholds of significance, please see Master Response 2.

### *Response to comment ST47-53*

Impacts to water resources due to implementation of Delta ecosystem restoration, water quality improvement, flood risk reduction, and Delta enhancement projects encouraged by the Delta Plan are described in Subsections 3.4.4 through 3.4.7 of the Draft Program EIR.

### *Response to comment ST47-54*

As described in Section 2B of the Draft Program EIR, the Delta Stewardship Council does not propose or contemplate directly authorizing construction or operation of any physical activities. Rather, through the Delta Plan, the Delta Stewardship Council seeks to influence the actions, activities, and/or projects of other agencies – the details of which are under the jurisdiction and authority of the individual agencies that will propose them in the future. The Delta Plan's degree of influence on future undefined projects is unclear. This EIR identifies feasible mitigation measures to reduce the significant effects on the environment. Agencies undertaking covered actions must incorporate these, or equivalent, measures into their projects or plans in order for any such covered action to be consistent with the Delta Plan. The EIR cannot determine at this time whether such mitigation will be sufficient to reduce all impacts of future projects to less than significant levels. For non-covered actions, the Council lacks authority to require that other agencies adopt any particular mitigation. The majority of other agency actions/projects this EIR evaluates will be non-covered actions. For these reasons, as CEQA requires, this program-level EIR determines that potentially significant impacts will be significant and unavoidable, even if identified mitigation measures, if consistently applied, could reduce impacts to a less than

significant level. Please see Master Response 2 for further explanation of the EIR's approach to the analysis of environmental impacts.

The text concludes: "However, because named water supply reliability projects and projects encouraged by the Delta Plan could result in the potential violation of water quality standards due to construction activities and operation of facilities that would disturb the water chemistry and liberate certain pollutants in waterways, the potential impacts are considered **significant**."

This important conclusion is not adequately supported by the evidence presented in the preceding two pages of this subsection. In fact, most of that evidence contradicts the conclusion:

1. "However, these impacts would be less than significant after standard construction BMPs for mitigation measures ..." [Page 3-78, lines 15 & 16]
2. "For this project, the SFPUC found that water quality impacts associated with project construction would be less than significant or less than significant with mitigation." [Page 3-78, lines 22 & 23]
3. "The lead agency found that the project could violate water quality standards or waste discharge requirements, but that the impacts would be less than significant with the implementation of a SWPPP and standard mitigation measures ..." [Page 3-78, lines 44 - 46]
4. "However, reservoirs will likely be operated in a manner to meet water quality and temperature objectives ..." [Page 3-79, lines 14 & 15]
5. "The lead agency found that the project would not result in significant adverse changes in Delta water quality ..." [Page 3-79, lines 18 & 19]
6. "...the lead agency found that changes in flows caused by the project ... had the potential to influence salinity and water temperature in some parts of the Delta, but that those impacts would be less than significant following implementation of mitigation measures by the water purchasers ..." [Page 3-79, lines 24-27]
7. "Therefore, the operation of desalination plants is not expected to cause adverse effects on water quality." [Page 3-79, lines 36 & 37]

ST47-54

In fact, on these two pages, there is no evidence presented of a particular significant impact on water resources that was not quickly opposed by a stronger counter-argument presented in the document. The conclusion does not match or flow from the preceding text.

**3.4.3.1.2 Impact 3-2a: Substantially Deplete Groundwater Supplies or Interfere Substantially with Groundwater Recharge**

Page 3-81, lines 46 & 47

The document states that: "It is therefore concluded that this impact [upon groundwater] would likely be less than significant." This conclusion appears to be well-supported by the evidence presented in the preceding two pages.

ST47-55

Page 3-84, line 37

ST47-56

*Response to comment ST47-55*

Comment noted.

*Response to comment ST47-56*

Comment noted.

ST47-56

This section concludes: "This impact [upon groundwater] would be less than significant." The Department concurs that the evidence presented in this subsection supports this conclusion.

**3.4.3.2.3 Impact 3-3b: Substantially Change Water Supply Availability to Water Users that Use Delta Water (Delta Ecosystem Resotration)**

Page 3-84, 3-85

The text states that adoption of Delta Flow objectives to a more natural flow regime could reduce water supply reliability within and outside of the Delta. The text further goes on to state that 'other aspects' of the Proposed Project would ensure that such an impact would be less than significant. The Department disagrees. Establishing a flow objective that creates a more natural flow regime has the potential to impact the reliability of exports, storage operations and salinity in the Delta that will be nearly impossible to reduce to less than significant. This statement either should be stricken or a detailed explanation of what the 'other aspects' of the Delta Plan entail and how they would mitigate for impacts to water supply reliability needs to be added.

ST47-57

**3.4.3.3.3 Impact 3-3b: Substantially Change Water Supply Availability to Water Users that Use Delta Water (Water Quality Improvement)**

Page 3-88, lines 3-14

The Department disagrees that the impact to water supply availability could be reduced to less than significant if a more natural flow regime is implemented. The authors of this document need to study water supply reliability in the western Delta. Cities like Antioch and other areas in the western Delta need fresh water releases to ensure that the water supply is not impacted by salt water intrusion. A more natural flow regime would result in higher salinities in the western Delta by design. A more thorough discussion is needed under this very important topic for the analysis to be complete.

ST47-58

**3.4.3.4.1 Impact 3-1d: Violate any Water Quality Standards or Waste Discharge Requirements or Substantially Degrade Water Quality (Flood Risk Reduction)**

Page 3-89, lines 1-11

The discussion with respect to methyl mercury associated with flood risk reduction is misplaced. The text uses the North Delta Flood Control and Ecosystem Restoration Project as reference for this discussion. The text should note that methyl mercury impacts described in the referenced North Delta EIR is in context with the ecosystem restoration not the levee rehabilitation. The discussion of methyl mercury in the flood risk reduction section should be removed.

ST47-59

***Response to comment ST47-57***

Please see Master Response 5.

***Response to comment ST47-58***

Please see Master Response 5.

***Response to comment ST47-59***

The North Delta Flood Control and Ecosystem Restoration Project was considered as an analogous project for flood risk reduction projects because the North Delta Flood Control and Ecosystem Restoration Project included the construction of levees and flooding of land currently protected by levees in a similar manner to flood risk reduction projects encouraged by the Delta Plan, as described in Section 2B of the Draft Program EIR.

**3.4.5.1.1 Impact 3-1: Violate any Water Quality Standards (Alternative 1A)**

Page 3-94, lines 41-43

The text states that construction of levees in the Delta would be less likely under Alternative 1A. The Department disagrees. The Delta Levees Program will continue under existing authorities.

ST47-60

**3.4.5.1.3 Impact 3-3: Substantially Change Water Supply Availability to Water users Located Outside of the Delta that Use Delta Water**

Page 3-95, lines 39-40

This very crucial analysis for Alternative 1A is handled in fewer than 10 lines. The text states that impacts on water supply availability under 1A would be the same as for the proposed project; yet this topic is the critical difference between the two alternatives. Additional discussion is needed to adequately compare the Proposed Project to Alternative 1A.

ST47-61

**3.4.6 Alternative 1B**

Page 3-96, line 11

The text states that there would be no ocean desalination projects under Alternative 1B. This statement is overreaching. Most ocean desalination projects are planned at a more local level, and there still may be ocean desalination projects regardless of the fate of various alternatives of the Delta Plan. Subsequent analyses predicated on this assumption need to be reanalyzed.

ST47-62

**Alternative 2**

**3.4.7.1.1 Impact 3-1: Violate any Water Quality Standards or Waste Discharge Requirements or Substantially Degrade Water Quality**

Page 3-98, lines 12-14

It is stated that under Alternative 2 the emphasis on resource protection would likely improve water quality. This analysis has to be clear on what is meant by improve water quality. Improvement of water quality for biomass production in a carbon starved estuary means more organic carbon is needed. However, improvement in drinking

ST47-63

***Response to comment ST47-60***

As described in Section 2A and Appendix C of the Draft Program EIR, Alternative 1A would modify the prioritization of levee investment programs that could result in less emphasis on investments to protect agricultural lands and increased investments to protect water supply corridors, and to include economically-based risk reduction approaches.

***Response to comment ST47-61***

The impact analysis determined that the conditions related to water supply reliability would be similar or the same under Alternative 1A and the Revised Project because the water supply agencies would be encouraged to reduce reliance on the Delta water resources through implementation of water use efficiency and local and regional water supplies in accordance with Reliable Water Supply Policies and Recommendations which are similar under both alternatives.

***Response to comment ST47-62***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST47-63***

As described in Section 2A, Alternative 2 would provide more emphasis than the Revised Project on the State Water Resources Control Board to develop flow criteria and flow objectives to prioritize beneficial uses for public trust resources in the Delta and upstream tributaries with an aggressive schedule, and therefore, would improve water quality as defined by the State Water Resources Control Board.

water quality means a reduction in organic carbon to limit trihalomethane precursors. Dissolved solids concentrations (salts) are important to the organisms in an estuary but are undesirable in drinking water. The Delta issues surrounding water quality are very complex, and a much more in-depth discussion is needed to provide an adequate analysis of impacts associated with the Delta Plan.

**3.4.7.1.2 Impact 3-2: Substantially Deplete Groundwater Supplies or Interfere Substantially with Groundwater Recharge**

Page 3-99, lines 3-5

It is stated that Alternative 2 provides increased emphasis on developing more natural hydrographs on rivers upstream of the Delta, and this would likely increase groundwater recharge. This is an oversimplification. Groundwater recharge is very dependent on the stream section and whether or not it is gaining or losing. It is also very dependent on whether or not the aquifer in a particular area is confined or semi-confined or unconfined. The discussion provided in this section is too simplistic.

**3.4.7.1.3 Impact 3-3: Substantially Change Water Supply Availability to Water Users Located Outside of the Delta That Use Delta Water**

Page 3-99, lines 12-18

The text provides a discussion on how Alternative 2 would increase the extent of activities associated with groundwater projects, ocean desalination, recycled wastewater and stormwater projects, water transfers, and water use efficiency and conservation programs. This would improve water users' ability to make up for reductions in the loss of water for water supply outside the Delta under Alternative 2. The activities described in this section come at a substantial cost; however, no discussion is made of these impacts to water users. High costs for alternative water supplies can translate into a less reliable system.

**SECTION 4 BIOLOGICAL RESOURCES**

**4.4.3 Proposed Project**

**4.4.3.2.1 Impact 4-1b: Substantial Adverse Effects on Sensitive Natural communities, Including Wetlands and Riparian Habitat**

Page 4-69, lines 29-32

The potential impact to sensitive natural communities associated with ecosystem restoration is considered significant. This conclusion is not consistent with ecosystem restoration projects' goals to enhance wetlands and riparian habitat in the Delta and will have to have a net benefit

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ST47-63

ST47-64

ST47-65

ST47-66

***Response to comment ST47-64***

A more natural hydrographs would likely increase groundwater recharge of the affected aquifer systems and increase groundwater levels in areas where the groundwater aquifer is directly connected with a river when the river flows are greater than under the Revised Project conditions.

***Response to comment ST47-65***

Economic impacts are not effects on the environment under CEQA, and are not analyzed in the EIR (CEQA Guidelines §§ 15064(e) and 15131).

***Response to comment ST47-66***

Even though Ecosystem Restoration projects would likely have a net benefit to wetland and riparian habitat in the Delta, some sensitive natural communities could be adversely affected as described in the referenced Subsection 4.4.3.2.1 of the Draft Program EIR.

**4.4.3.2.3 Impact 4-3b: Substantial Adverse Effects on Fish or Wildlife Species Habitat**

Page 4-71, lines 4-7

Again, the text states that impacts on fish and wildlife species habitat associated with ecosystem restoration projects over the long term could be significant. These projects may impact some common mono-typical ecosystems by transforming them into a more diverse and more natural functioning ecosystem. Any short-term adverse impacts need to be weighed against long-term beneficial impacts to multiple species, inclusive of listed species.

ST47-67

**4.4.3.3.1 Impact 4-1b: Substantial Adverse Effects on Sensitive Natural communities, Including Wetlands and Riparian Habitat**

Page 4-73, lines 3-39

Improvements of water quality needs to be defined in the document. This section discusses both water quality for the environment and water quality for drinking water supply. These are two very different water quality objectives, especially with respect to constituents such as salts or dissolved total organic carbon.

ST47-68

**4.4.3.4 Flood Risk Reduction**

**4.4.3.4.2 Impact 4-2d: Substantial Adverse Effects on Special-status Species**

Page 4-77, lines 20-28

This section discusses effects on special-status species associated with levee rehabilitation. The Delta Levees Program is administered by the Department in partnership with the Department of Fish and Game (DFG). Impacts to special-status species such as the Swainson's hawk are avoided due, in large part, to the long-standing partnership and close working relationship with DFG. In fact, the enabling legislation for the Delta Levees Program requires net habitat enhancement as a requirement for levee rehabilitation projects. This unique program forwards much of the habitat enhancement activities in the Delta with emphasis on constructing habitat for special-status species. Therefore, the Department disagrees with the conclusion that flood risk reduction projects encouraged by the Proposed Project would have a significant impact on special-status species.

ST47-69

**4.4.5 Alternative 1A**

**4.4.5.1.3 Impact 4-3: Substantial Reduction of Fish and Wildlife Species Habitat**

Page 4-88, lines 31-32

ST47-70

***Response to comment ST47-67***

Please see response to comment ST47-64.

***Response to comment ST47-68***

Subsection 4.4.3.3.1 of the Draft Program EIR discusses both water quality for ecosystem restoration and drinking water quality. While there are two different water quality objectives for ecosystem restoration and drinking water quality, especially with respect to constituents such as salts or dissolved organic carbon, the Delta Plan would encourage the State Water Resources Control Board to meet both of these objectives, as described in Section 2A and the subsection of the Draft Program EIR referred to in this comment.

***Response to comment ST47-69***

Flood risk reduction projects encouraged by the Delta Plan are assumed to be more extensive than those under the Delta Levees Program, and therefore would not necessarily be covered by that program's protections. Regarding the EIR's approach to the analysis of environmental impacts and conclusions of significance, please see Master Response 2 and the response to comment ST47-54.

***Response to comment ST47-70***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

Earlier in this section it is stated that Alternative 1A has less emphasis on Delta ecosystem restoration. However, these lines state that significant impacts on fish and wildlife habitat would be **less than** under the Proposed Project. These two statements appear to contradict each other. The Department believes that ecosystem restoration in the Delta would increase fish and wildlife habitat, and the impacts would be beneficial.

ST47-70

#### 5.3.4 Overview of Flood Management Facilities in the Delta Watershed and the Delta

Page 5-3, line 9

ST47-71

Line 9 should read: "In 1893, the California Debris Commission was established to regulate hydraulic mining, plan for improved navigation, deepen channels, protect river banks, and afford relief from flood damages."

Page 5-4, lines 39-40

ST47-72

Management of seepage water on Delta islands is primarily for agricultural purposes, not flood management.

##### 5.3.4.1.2 Sacramento River Project Levees in the Delta

Page 5-8, lines 14-24

ST47-73

This section should note that, although the US Army Corps of Engineers is responsible for rehabilitating bank erosion along project levees in the Delta, for many years this work went unfunded. The FloodSAFE initiative has moved this work forward in recent years.

##### 5.3.4.3 Non-project Levees in the Delta and Suisun Marsh

Page 5-10, lines 7-16

ST47-74

This section of the document appears dated as evidenced by the author's citation of a 1995 DWR publication. In 1996, Assembly Bill 360 expanded the Delta Levees Program to include the entire Delta and the portions of Suisun Marsh (approximately 12 miles of levees on islands bordering the Northern Suisun Bay from Van Sickle Island westerly to Montezuma Slough) as outlined in Section 12311 of the California Water Code. Funding for the Delta Levees Program was established at \$6 million per year for Subventions (primarily Delta levee maintenance) and \$6 million per year for the Special Flood Control Projects. Actual funding was typically less. In November 2006 the voters passed Propositions 84 and 1E, which substantially increased funding for Delta levees, and the Department published Guidelines for funding projects in 2009, 2010 and 2011.

### *Response to comment ST47-71*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### *Response to comment ST47-72*

Seepage is managed in some areas of the Delta to protect the levee foundations and thus maintain flood protection.

### *Response to comment ST47-73*

The sentence on page 5-8, lines 6 through 7, indicates that the Central Valley Flood Protection Board, Department of Water Resources, and local reclamation districts maintain the project levees.

### *Response to comment ST47-74*

In response to this comment, please see text change(s) in Section 5 in this FEIR.

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This funding may be spent on project and non-project levees, in accordance with Water Code; however, the emphasis has been to fund non-project levees in accordance with the guidelines. It may be implied as read that non-project levees are regulated by the Central Valley Flood Protection Board when most are not (see C.C.R. Section 112, for a list of water courses actively regulated by the CVFPB. This section should be significantly revised.

Page 5-10, line 30

Please review text as there are project levees along the San Joaquin River, specifically those levees constructed as part of the "Lower San Joaquin River and Tributaries Project" which was completed in 1968. These project levees are a criteria for the Levee Flood Protection Zones later referenced in section 5.3.5.1.3 "DWR Analyses."

#### 5.3.4.4 Delta Drainage Facilities

Page 5-11, lines 6-7

It is stated that Delta Islands are near or below sea level and depend on interior drainage and pumping to stay dry. This is an over generalization. This is true for islands or tracts in the estuarine portion of the Delta but not for all islands in the non-estuarine portion.

Page 5-11, line 24

Consider adding the sentence: "Delta levees have an additional stress in that they hold back water 365 days each year, regardless of weather or season."

#### 5.3.5.1 Flood Risks

Page 5-12, line 5

Consider going to a consistent phrase of "against the levee." Currently the text vacillates between "on" and "in" the levee. The first sentence should read "Levee failure can occur through levee seepage and under seepage, and excessive water pressure against the levees." Similarly, line 13 would change to read "...is the buildup of excessive water pressure against the levee, which could....."

Also, breaching of a levee is not synonymous with overtopping. We suggest that the sentence read: "While Overtopping was the most common type of failure mechanism in the past, more recent failures are related to seepage and underseepage....."

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ST47-74

ST47-75

ST47-76

ST47-77

ST47-78

ST47-79

### *Response to comment ST47-75*

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### *Response to comment ST47-76*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### *Response to comment ST47-77*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### *Response to comment ST47-78*

Comment noted.

### *Response to comment ST47-79*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**5.3.5.1.1 FEMA Analysis**

Page 5-12, line 32

Consider including a diamond section for PAL since it figures so heavily in the upcoming geographical descriptions in the next section.

ST47-80

**5.3.5.1.3 FEMA Flood Areas**

Page 5-15, beginning at line 31

The name is incorrect. "Protected" should be "Protection" every time it appears in "Levee Flood Protection Zones." The actual wording comes from AB 156.

ST47-81

**5.3.5.2 Earthquake Risks**

Page 5-20, line 26

Consider adding a brief definition of liquefaction for clarity purposes

ST47-82

**5.3.7.2 Emergency Response Authorities and Responsibilities**

Page 5-27, line 1

The sentence "Many reclamation districts have material and some equipment available for conducting flood fights should the need arise" overlooks the critically important fact that not all reclamation districts are properly prepared. The Department suggest that the text should read: "Many – but not all – reclamation districts...."

ST47-83

Page 5-27, line 4

For consistency and clarity, the text should refer to the Flood Center as the State Federal Flood Operations Center.

ST47-84

Page 5-27, line 12

More emphasis should be given to the inconsistent level of planning and preparedness amongst reclamation districts to emphasize that this disparity is a public safety issue. The text should read: "However, the degree of planning and preparedness varies widely between reclamation districts and can lead to delayed or ineffective emergency response."

ST47-85

Page 5-30, line 36

ST47-86

***Response to comment ST47-80***

The PAL designation is described in Subsection 5.3.5.1.2 of the Draft Program EIR.

***Response to comment ST47-81***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST47-82***

Comment noted.

***Response to comment ST47-83***

The use of the word "many" implies that "not all" of the reclamation districts are prepared.

***Response to comment ST47-84***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

***Response to comment ST47-85***

Comment noted.

***Response to comment ST47-86***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

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ST47-86

The roles of DWR and Division of Flood Management appear to be reversed. Consider revising the text to: "As a component of DWR, the Division of Flood Management coordinates flood operations with...."

Page 5-31, line 7

ST47-87

For clarity of organization structure consider revising the sentence to: "The Flood Operations Center coordinates with Cal EMA on flood events...."

Page 5-31, line 10

ST47-88

Consider revising this to read: "Most flood emergencies begin as local events. The State Federal Flood Operations Center is continuously ready to assist locals and coordinate state response. The FOC coordinates state flood response activities, including Delta high water...."

Page 5-31, line 25

ST47-89

There appears to be too much emphasis on an old plan (Delta IFEOP) and not enough emphasis on the new plan. Consider deleting everything after "of a response" through "if appropriate."

Page 5-32, line 7

ST47-90

After "decisions" consider inserting a new sentence: "The program states that DWR will respond to a Delta flood emergency according to the following priorities: 1) protection of life and public health and safety; 2) protection of critical infrastructure; and 3) protection of the environment."

Page 5-32, line 26

ST47-91

This section is outdated. Consider changing the paragraph to: "The Task Force held its most recent public meeting on January 5, 2012. The Task Force Report was approved by the Task Force members and is being submitted to the Cal EMA Secretary for approval. A public draft is not yet available." Consider deleting all text from page 5-32 line 29 through page 5-34, line 4.

#### 5.4.3.1 Reliable Water Supply

Page 5-37, lines 9-12

ST47-92

The text states: "However, the Proposed Project specifically names the DWR Surface Water Storage Investigation, which includes the North-of-the-Delta Offstream Storage Investigation (Sites Reservoir), Los Vaqueros Reservoir Project (Phase 2), and the Upper San Joaquin River Basin Storage Investigation Plan (Temperance Flat

### *Response to comment ST47-87*

Comment noted.

### *Response to comment ST47-88*

Comment noted.

### *Response to comment ST47-89*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### *Response to comment ST47-90*

Comment noted.

### *Response to comment ST47-91*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### *Response to comment ST47-92*

The projects named in the Final Staff Draft Delta Plan are described in Section 2A of the Draft Program EIR.

Reservoir)." Each of these proposed projects should be discussed in more detail so the reader understands in context why they are applicable. This comment applies to all of the sections in the PEIR. Many sections refer to projects without further definition. Further examples of needed definition can be found on 5.4.3.2, page 5-44, lines 25-31 and 5.4.3.3, page 5-49, lines 34-42.

ST47-92

Page 5-37, lines 39-41

Of the three surface storage reservoirs considered by the DWR Surface Water Storage Investigation, only the Los Vaqueros Reservoir Expansion Project has been studied in an EIS/EIR; the other two projects have not. Do the other projects listed in this document have associated environmental documents? This information would be helpful for the future Lead Agencies when implementing the Delta Plan. This comment applies to all of the sections in the PEIR. In each of these sections, please state if the projects listed in this PEIR have other CEQA environmental documents.

ST47-93

#### 5.4.3.1.1 Impact 5-1a

Page 5-38, lines 39-41

This potential impact would most likely occur in rivers downstream of confluences of major rivers that have upstream reservoirs, such as downstream of the confluence of the Sacramento and American rivers, which would impact the cities of West Sacramento and Sacramento, among others. Consider listing the other cities.

ST47-94

#### 5.4.3.2.1 Impact 5-1b: Substantially Alter the Existing Drainage Pattern of the Site or Area

Page 5-45, lines 15-26

The discussion regarding setback levees and impacts to drainage with respect to the Delta is incorrect. The text states that moving a levee further into the floodplain (the author's concept of a setback levee) could remove some water storage space from the floodplain. It should be noted that subsided Delta islands should not be considered part of the floodplain. Flooding of a subsided Delta island spells disaster for the reclamation district in that the island will fill with water if a levee is breached. The island will not act as a traditional floodplain. Setback levees in the Delta are typically constructed by broadening the levee to the landside and contouring the waterside of the levee to mimic more natural conditions. Ponding of water and other changes to the drainage is minimal since most islands have a designed agricultural drainage system utilizing pumps to dewater the island.

ST47-95

Contrary to the statement in line 24, setback levees in the Delta are not constructed across the floodplain flow path. This section needs to be updated as such and any analysis relying on that premise should be redone. The Department does not

### *Response to comment ST47-93*

Final or draft environmental documents have not been completed for the North of Delta Storage Investigation or Upper San Joaquin River Storage Investigation. The status of all projects named in the Delta Plan is described in Section 2A of the Draft Program EIR.

### *Response to comment ST47-94*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### *Response to comment ST47-95*

As described in Section 2A, the Delta Plan would expand the floodplain by relocating or removing levees throughout the Delta, including subsided islands. In some cases, the relocated levees could be replaced by setback levees. The floodplain paths described in the impact are associated with floodplain paths across islands currently protected by existing levees, especially if the levees modified the shape of the existing islands. Impacts to drainage patterns related to such floodplain paths could be, as the EIR concludes, significant.

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believe that changes to drainage patterns associated with the construction of setback levees are significant.

**5.4.3.3.5 Impact 5-5c: Place Within a 100-year Flood Area Structures Which Would Impede or Redirect Flows**

Page 5-55, lines 11-19

Setback levees will not be constructed across the floodplain flow path. The Department disagrees with the conclusion that impacts to drainage patterns will be significant.

**5.4.4 No Project Alternative**

Pages 5-70 to 5-71, lines 32-44 and 1-15 respectively

The text states that adverse impacts on flood management resulting from the No Project Alternative would be greater than the Proposed Project. Unless adoption of the Delta Plan brings a significant amount of additional funding for water supply reliability and flood management activities, these two alternatives may be similar. The formation of a more regionalized levee maintaining agency could increase overhead costs for program implementation and result in less levee rehabilitation work being completed, unless more money is made available. This would result in the No Action Alternative having less adverse impacts to flood management.

Also, contrary to what is written in this section, conditions in Delta flood management have not declined and do not continue to decline. The implementation of levee rehabilitation projects in the Delta and associated habitat enhancement projects has increased since the passage of SB34 and AB360 that established and continue the Delta Levees Program. The infusion of significant funding from Propositions 84 and 1E has funded levee rehabilitation projects to an unprecedented level in the past few years. This section should be reanalyzed and efforts for closer coordination between the Central Valley Flood Protection Planning effort, the Delta Levees Program, and the Delta Plan should be made.

**5.4.6 Alternative 1B**

Page 5-73, lines 41-43

It is stated that there would be no setback levees or subsidence reversal projects under Alternative 1B. This is untrue. The Department continues to plan, develop and construct setback levees and subsidence reversal projects in the Delta under its Delta Levees Program.

**SECTION 6 LAND USE AND PLANNING**

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ST47-95

ST47-95

ST47-97

ST47-98

ST47-99

ST47-100

**Response to comment ST47-96**

**Please see the response to comment ST47-95. Response to comment ST47-97**

As described in Section 2B, and further explained in Master Response 2, of the Draft Program EIR, the Draft Program EIR assumes that other agencies will be encouraged to implement actions by recommendations in the Delta Plan.

**Response to comment ST47-98**

As described on page 2A-67 and Section 2.3.2 of the Draft Program EIR and as required by CEQA Guidelines section 15126.6(e), the No Project Alternative, consists of the environment if no Delta Plan is adopted and assumes that existing relevant plans and policies would continue. The No Project Alternative also includes physical activities and projects that are permitted and funded at this time. Thus, as described in subsection 2.3.2.4, under the No Project Alternative, it is assumed that existing levee maintenance and repair programs would be continued until existing funds from State bonds are fully utilized. However, if adequate local funds are not available, the potential for levee failure could increase. Implementation of additional levee improvement programs may not be reasonably expected to occur in the foreseeable future under the No Project Alternative based on current plans and existing levees. Therefore, it is anticipated that the potential risk to Delta land uses and communities and water supplies that rely upon Delta water would have increasing risk in the future.

**Response to comment ST47-99**

As described in subsection 2.3.2.4, under the No Project Alternative, it is assumed that existing levee maintenance and repair programs would be continued until existing funds from State bonds are fully utilized. However, if adequate local funds are not available, the potential for levee failure could increase. Implementation of additional levee improvement programs may not be reasonably expected to occur in the foreseeable future under the No Project Alternative based on current plans and exiting levees. Therefore, it is anticipated that the potential risk to Delta land uses and communities and water supplies that rely upon Delta water would have increasing risk in the future. The Draft Program EIR assumes that other agencies will be encouraged under Alternative 1B to implement

recommended actions in the Delta Plan including funding those actions. However, as described in Section 2A, because the actions only would be recommendations, instead of policies, the actions would be less likely under Alternative 1B than the Revised Project.

***Response to comment ST47-100***

The label in the legend box referred to in this comment of Figure 6-2 in the Draft Program EIR has been revised to "Sacramento County."

**6.2.1 Local Land Use Plans**

Section 6, page 6-6, Map legend

The Map legend indicates Yolo County is outlined by highlighted dotted line. It should be labeled "Sacramento County".

ST47-100

**6.4.3.4.1 Impact 6-1d: Physical Division of an Established Community**

Page 6-58, lines 8-38

It is stated that flood risk reduction activities such as construction of setback levees and restoration of floodplain areas would have a significant impact with respect to the physical division of established communities. The Department disagrees. Since setback levees and floodplain restoration areas are on water bodies that already physically separate these communities, these types of projects would have little, if any, additional impacts.

ST47-101

**SECTION 7 AGRICULTURE AND FORESTRY RESOURCES**

**7.1 Study Area**

Page 7-2, lines 13-14

A footnote should mention that in some wet years, water from the Tulare Lake Basin flows into the Delta, although that land is evidently not included in the "Delta watershed" of this PEIR. It would be helpful to include a map of that watershed in this section, or have a reference to such a map elsewhere in the PEIR.

ST47-102

Page 7-2, lines 22 and 23

The sentence, "The Delta Plan policies and recommendations will have a greater impact within the Delta than elsewhere," should be changed to: "The Delta Plan policies and recommendations will have a greater direct impact within the Delta than elsewhere." In the long run, including both direct and indirect impacts, the choice to adopt the Delta Plan and implement its policies and recommendations, when compared to the No Action alternative, could have significant impacts in the Delta service area.

ST47-103

**7.3.2.1.1 Agriculture and Land Use**

Page 7-4, Table 7-1

What was the Farmland Mapping and Monitoring Program's (FMMP) mapping date or dates for the estimates of prime farmland etc., shown in Table 7-1? Right below

ST47-104

***Response to comment ST47-101***

Long-term operation of flood risk reduction projects has the potential to permanently isolate developed areas, rural communities, or agricultural areas from urban services, especially, if projects occur near an urban edge or at the boundary of the Secondary Zone. Many Delta community boundaries extend beyond the limits of urban development and often include adjacent, less intensively developed lands. The alignment and design of flood protection facilities could limit access and therefore could potentially create a physical barrier within portions of a community. Division of an established community could also occur where setback levees are constructed adjacent to existing communities, such as Walnut Grove and Isleton, that are partially located on the top of levees. Floodplain expansion could result in the physical division of an established community where flood flows periodically or permanently inundate existing roadways or obstruct infrastructure that traverses the inundation area (e.g., bridges). In addition, floodplain expansion could allow inundation of lands currently on the land side of existing levees or cause flooding of Delta islands.

***Response to comment ST47-102***

Comment noted.

***Response to comment ST47-103***

Comment noted.

***Response to comment ST47-104***

The footnote on Table 7-1 in the Draft Program EIR has been modified to include the following: All acreage values are for Year 2008.

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the table is the note, "Source: DOC 2009." But that does not indicate when the actual farmland mapping took place. That could have occurred in 2006, 2007, or 2008.

ST47-104

Also, the text or table heading should indicate for what year or years are the values in Table 7-1. Just because a table comes from an unnamed "DOC" report published in 2009 does not necessarily mean that that table represents Delta land use patterns in 2009.

ST47-105

Page 7-5, line 3

The phrase "the region" should be replaced by "most of the Delta's primary zone." Peat soils make up a much smaller proportion of the soils in the Delta's secondary zone than they do in the primary zone.

ST47-106

Page 7-5, line 4

According to Table 7-1, prime farmland comprised 54 percent of the Delta's total acreage for an unspecified recent year and 48 percent of the total acreage (including water) of the Delta plus Suisun Marsh. The "4748 percent" figure should be corrected and the year to which that estimate applies should be stated.

ST47-107

Page 7-5, starting on line 24

This paragraph on the Williamson Act should mention that the State has greatly reduced its financial support for this Act in recent years and that the ability of this Act to protect farmland from urbanization in future years remains uncertain.

ST47-108

#### 7.3.2.1.2 Agricultural Production

Page 7-10, line 4

Not so long ago, sugar beets were a common Delta crop. But recent years have seen the closure of all the Northern California sugar mills which once refined those beets. Sugar beets are no longer grown in the Delta, according to DWR Land and Water Use Scientists who survey the Delta.

ST47-109

Page 7-10, lines 7-9

Parts of the cited 2007 DWR study are now out-of-date. Research for a January 2011 DWR paper revealed that between 2005 and 2009 the opposite trend occurred: away from higher-valued truck, tree and vine crops, and toward lower-valued field crops. This trend was also mentioned in a February 2011 UC Agricultural Issues Center report presented to the DSC. It remains to be seen if this is just a short-term 'blip' in a long-term trend toward higher-valued truck, tree and vine crops, or if the record between

ST47-110

### *Response to comment ST47-105*

Please refer to response to comment ST47-104.

### *Response to comment ST47-106*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### *Response to comment ST47-107*

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### *Response to comment ST47-108*

Comment noted.

### *Response to comment ST47-109*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### *Response to comment ST47-110*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

2005 and 2009 represents the start of a new trend. The future may not be promising for higher-valued truck, tree and vine crops in the Delta – especially in the Primary Zone.

Page 7-10, line 11

Irrigated pasture is a permanent crop, not a rotational crop.

#### 7.3.2.2.1 Forestland and Timber Resources

Page 7-10, lines 31-32

Concerning the statement, "approximately 44,530 acres of private timberland, one-half of which is composed of western oaks, are located in the five Delta counties." The text should not confuse the "Delta counties" with the Delta. Relatively few of those 44,530 acres of private timberland are located within the legal Delta.

Page 7-11, line 11

The text should explain the meaning of the terms "naturally recruited" second-growth "woodlands."

#### 7.3.3.1 Agriculture

Page 7-12, line 12

The report states: "Agriculture in the Central Valley produces 57 percent of California's agricultural products." How is this defined? Is this by weight, by value, or by some other measure? And for what year is the estimate?

##### 7.3.3.1.1 Agricultural Land Use

Page 7-14, lines 3-4

The text should make clear that most-to-all of the farmlands in the areas of the Central Coast and Southern California which receive some of their water supply from water exported from the Delta are not actually irrigated with much, if any, water from the Delta. The majority of the agricultural water used in those areas of the Central Coast and Southern California comes from ground water, local surface water, recycled water, or Colorado River water.

##### 7.3.3.1.2 Agricultural Production

Page 7-14, lines 9-12

25

ST47-110

ST47-111

ST47-112

ST47-113

ST47-114

ST47-115

ST47-116

### *Response to comment ST47-111*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance

### *Response to comment ST47-112*

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### *Response to comment ST47-113*

Please refer to the response to comment ST47-112.

### *Response to comment ST47-114*

This value is defined in terms of cash receipts when comparing the Central Valley with all of California.

### *Response to comment ST47-115*

The sentence referred to in this comment on page 7-14 of the Draft Program EIR is describing the Delta watershed, not areas located outside the Delta that use Delta water.

### *Response to comment ST47-116*

The term "export value" refers to the value of a crop associated with export to foreign markets. The primary nut crop being exported is almonds, which had a 2009 crop value of \$8.7 million. The United States supplies 80% of the world's almond exports. Total nut production value in the Delta exceeds \$18 million (combined almonds and walnuts), making this group the ninth most valued crop in 2009 (University of the Pacific 2012).

The term "export value" needs to be explained. Relatively little of the Delta's agricultural output is exported to foreign countries. Also, the Department is not aware of any published estimates of the value of the Delta's agricultural output that is exported. Also, there are relatively few nut orchards in the Delta. If "export value" and "nuts" are removed from this sentence, it would be accurate.

ST47-116

Page 7-14, lines 12-14

Many of the activities cited as examples of farm-based tourism, such as "fishing" and "inns", would probably not be considered farm-based. And although these activities may, taken together, constitute a significant portion of the Delta's economy, they do not "represent substantial land uses in the Delta."

ST47-117

Page 7-14, lines 16-18

Sugar beets, almonds, and nectarines do not constitute "common crop types" in the Delta. The Department is not aware of any commercial poultry farms in the Delta.

ST47-118

#### 7.3.3.2.2 Timber Production Zones

Page 7-14, lines 25-27

The claim made about "Timber Production Zones" is appears to be incorrect or misleading. There is significant timber production in California in areas outside the Delta watershed and areas which use water exported from the Delta. Some of that timber comes from the North Coast south of Del Norte County, some comes from the foothills of the southern Sierras, and some comes from the Lake Tahoe Area, or just north and south of it in areas that are just outside the Delta watershed. There was even some from Santa Cruz County as recently as 1998. CalFire forest economists may be able to provide more information.

ST47-119

#### 7.3.4.1 Agriculture

Page 7-16, lines 11-12

The statement: "Outside of the Central Valley, land is mostly urban, built up, or not suitable for farming" is misleading. There is a substantial amount of productive irrigated farmland outside the Central Valley, which produces about a third of the value of California's crop output year-after-year. These areas include the Napa Valley, the Salinas Valley, the Santa Maria Valley, the Oxnard Plain, the Coachella Valley, the Imperial Valley, and the Palo Verde Valley. There is also significant irrigated agriculture in Lake County, San Benito County, Sonoma County, San Diego County, and in some of the valleys of NE California. And, if one includes grazing as a farming activity, then there is even more land suitable for farming in California that lies outside the Central Valley than there is that lies within that valley.

ST47-120

### *Response to comment ST47-117*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### *Response to comment ST47-118*

Comment noted.

### *Response to comment ST47-119*

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### *Response to comment ST47-120*

In response to this comment, please see text change(s) in Section 5 in this FEIR.

#### 7.3.4.1.1 Agricultural Land Use

Page 7-17, line 2

A definition should be provided here of what the authors mean by the phrase "in the areas outside the Delta that use Delta water." Does this area include only the areas which receive water exported from the Delta? Or does it also include areas that use water diverted from rivers or streams whose waters eventually flow into the Delta?

ST47-121

Page 7-17, Table 7-7

Based on the lines directly above Table 7-7, it appears that the 5.2 million acres of California "farmland" under Williamson Act protections "Outside the Delta That Used Delta Water in 2009" includes land that is grazing land. The text should indicate if the 5.2 million acres includes grazing land, which is mostly unirrigated pasture and range.

ST47-122

#### 7.3.4.1.2 Agricultural Production

Page 7-17, lines 13-14

The list of "common crop types" for the Delta watershed appears to be word-for-word the same as the list of common crop types for the Delta. Some of the crops on this list are insignificant or uncommon in either the Delta or the Delta watershed outside the Delta, but are significant or common in the other area. Also, most of the "crop types" in this list are not crop types at all – they are crops.

ST47-123

#### 7.4.1 Assessment Methods

Page 7-18, lines 20-21

The phrase "mitigation measures ... may not be adequate to mitigate impacts to a less-than-significant level" needs more explanation. The geographic context of this statement, and similar statements in this EIR, should be established. Are the authors referring to all of California, or the Delta watershed plus Delta water export area, or the Delta watershed alone, or the six counties which contain the Delta, or the legal Delta alone? It would be helpful to put the discussion of mitigation measures in context in terms of the area considered both for impacts and mitigation measures.

ST47-124

#### 7.4.3.1.1 Impact 7-1a: Conversion of Farmland to Nonagricultural Use

Page 7-20, lines 39-41

ST47-125

### *Response to comment ST47-121*

Please refer to response to comment ST47-15.

### *Response to comment ST47-122*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### *Response to comment ST47-123*

The discussion referenced in this comment addresses the entire area outside of the Delta that uses Delta water. The crops in that area are similar to the crops in the Delta and Delta watershed.

### *Response to comment ST47-124*

Please refer to response to comment ST47-54.

### *Response to comment ST47-125*

In response to this comment, please see text change(s) in Section 5 in this FEIR.

The document states: "particularly if local lands have specific soil conditions (such as peat soils in the Delta) that support high-value crops that cannot be readily grown elsewhere in the Delta watershed." Note that there is less peat soil in the Delta today than there was 30 years ago. Also, according to a Department survey of Delta agriculture during the 2005-to-2009 period, the large majority of the Delta's acreage today does not "support high-value crops that cannot be readily grown elsewhere in the Delta watershed." The only high-value crop common to the Delta that cannot be readily grown elsewhere in the Delta watershed is asparagus, a crop that has been in sharp decline in California during the past ten years.

ST47-125

Page 7-21, lines 25-27

The document makes the statement that: "... it is likely that the agricultural resources impacts of projects of a similar nature encouraged by the Delta Plan could be mitigated to a less-than-significant level for short-term construction impacts, but not for more permanent conversions of farmland." The Department concurs with the first assertion, with regard to the second assertion, we suggest changing the language to say that it may not be possible to mitigate to less-than-significant for permanent conversions.

ST47-126

**7.4.3.1.3 Impact 7-3a: Conflict with Existing Zoning for, or Cause Rezoning of, Forestland, Timberland, or Timberland Zoned for Timberland Production**

Page 24, Lines 35-37

The text states: "However, because named projects and projects encouraged by the Delta Plan could result in conflict with existing timber or forest zoning or TPZ, this potential impact is considered significant." First, this section of the EIR has not established to what extent projects encouraged by the Delta Plan lie within lands that fall under the definition for forestland and timberlands, nor the extent of such lands. Also, the word "significant" denotes a certain scale of impact that is above slight, minor, and insignificant. Yet no estimates have been given in this Section on the scales of the possible conversions of agricultural or forest lands due to the implementation of some of the Delta Plan's recommendations. The conclusion is not supported by the evidence presented.

ST47-127

**7.4.3.1.4 Impact 7-4a: Loss of Forestland or Conversion of Forestland to Non-forest Use**

Page 7-24, lines 40-45

The statement is made: "The USFS estimates indicate that approximately 44,530 acres of private timberland, half of which is composed of western oaks, are located in the five Delta counties." For what year is this USFS estimate and does more recent and

ST47-128

***Response to comment ST47-126***

Please refer to response to comment ST47-54.

***Response to comment ST47-127***

It is unclear at this time what specific activities would result with implementation of the Delta Plan. The location, number, capacity, methods, and duration of construction activities and the types of facilities that would be operated are unknown. However, reliable water supply projects could result in construction of facilities, including storage reservoirs in areas of the Delta watershed with forestlands. Final determination of site-specific impacts associated with constructing and operating water storage facilities would determine the extent and significance of potential impacts; however, for purposes of this Program EIR, the conclusion is based on information supporting a reasonable assessment of potential impact.

***Response to comment ST47-128***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

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ST47-128

relevant data exist? The Department has an estimate of the acres of forest lands in the Delta in 2007, which may be of some use to the authors.

Page 7-25, line 2

The statement is made: "3,288 acres of hardwood habitats are located in the Delta." The same issues reside with this statement, such as a full citation, the year of the data, and some statement as to the current accuracy of the data.

ST47-129

Page 7-25, lines 3-4

The text states that: "8,980 acres of riparian forest habitat are in the Delta." Again, the document should include a full citation, the year of the data, and some statement as to the current accuracy of the data. In earlier drafts of the Delta Plan, the Department commented on many instances of old, out-of-date estimates concerning Delta agriculture being presented as current estimates or estimates for recent years. The forest land estimates on Page 25, Lines 2 – 4 are quite relevant to the EIR. The document should state the year or years in which the surveys were conducted that produced those estimates. That information should be available from the *original* documents which contained those estimates. The acreage estimates are often not for the years in which the documents that contain them are published.

ST47-130

Page 7-25, lines 8-11

The authors should explain how "forestlands in the Delta watershed and areas outside the Delta that receive Delta water" would be affected by the adoption of projects recommended by the Delta Plan if they are located "in abandoned, low-lying fields."

ST47-131

Page 7-25, lines 17-18

The claim is made that if some of the projects recommended by the Delta Plan are adopted: "... groundwater wells could be constructed throughout the Delta ...". The large majority of the Delta has a water table that is so high and farmland that is so close to Delta waterways, that groundwater is simply not pumped. According to a Senior Land and Water Use Scientist in the Department Regional Office that covers the Delta, there are only a few wells located in the Delta, all along the edges of the Delta. It is difficult to contemplate a water project that would result in groundwater wells being constructed throughout the Delta.

ST47-132

Page 7-25, lines 24-26

The text states that "Construction of these facilities (such as those considered under DWR's Surface Water Storage Investigation (SWSI)) could potentially cause a substantial conversion of forestland." There is no data provided to back this statement.

ST47-133

### ***Response to comment ST47-129***

Please refer to the response to comment ST47-128.

### ***Response to comment ST47-130***

Please refer to the response to comment ST47-128.

### ***Response to comment ST47-131***

Please refer to the response to comment ST47-128.

### ***Response to comment ST47-132***

Comment noted.

### ***Response to comment ST47-133***

At this time, specific locations of storage facilities in the Delta watershed are not known. Depending upon the locations of storage facilities, forest lands could be affected through inundation.

Page 7-26, lines 3 -5

Although it does not give any estimate or forecast of the scale of forestland conversions due to the implementation of some Delta Plan-recommended projects, the section concludes that: "this potential impact is considered significant." Given the evidence presented in this report, we recommend changing the language to: "this potential impact *may be* considered significant." The recommendation applies throughout the document where the documents makes a categorical statement that the impact "is considered significant". There are so many unknowns about so many of these actions, that the Department suggests changing the language to "may be considered significant".

ST47-134

**7.4.3.1.5 Impact 7-5a: Involve Other Changes in the Existing Environment That Because of Their Location or Nature, Could Result in Conversion of Farmland to Nonagricultural Use or Conversion of Forestland to Nonforest use**

ST47-135

Page 7-26, lines 31-33

This section should provide a few examples of non-native species which might be spread by the construction of projects encouraged by the Delta Plan.

Page 7-27, lines 1-2

One or two examples of "projects that are encouraged by the Delta Plan" which "could result in *reduced* water deliveries to areas outside the Delta" should be given.

ST47-136

Page 7-27, lines 4-6

It is stated that "Continuous longer term fallowing and changes in agricultural practices resulting from reduced water deliveries could eventually result in the physical conversion of agricultural land to a nonagricultural use." Reduced agricultural water deliveries could result in farmland fallowing for a year or two at a time. These reduced deliveries could eventually lead to the retirement of vulnerable farmland from irrigated production. However, such reduced deliveries would not result in "continuous longer term fallowing." In fact, farmland fallowing is neither continuous nor long term.

ST47-137

Also, farmland that is frequently fallowed may indeed be eventually retired from irrigated production. However, in much of California, such formerly irrigated farmland is not "converted to non-agricultural use." Instead, it is dryland farmed every year or two, or grazed by cattle or sheep. It returns to its owner far less gross or net revenue, on average, than when it was irrigated. However, the land remains in agricultural use.

Page 7-27, lines 8-11

ST47-138

## ***Response to comment ST47-134***

Please refer to response to comment ST47-54.

## ***Response to comment ST47-135***

Disturbance and removal of existing vegetation as a part of construction activities could result in the spread of nonnative invasive species or noxious weeds, such as purple loosestrife, Baltic rush, creeping wildrye, and saltgrass, to new areas, which could negatively affect the health or viability of surrounding agricultural or forest uses. The spread of nonnative invasive species and noxious weeds as a result of construction activities is further discussed in EIR Section 4, Biological Resources.

## ***Response to comment ST47-136***

Reliable water supply projects under the Revised Project are described in Section 2A of the Draft Program EIR.

## ***Response to comment ST47-137***

A study of past extended dry conditions found that although most lands were temporarily fallowed or converted to dry farm crops, some lands were taken from agricultural production and converted to other uses (Villarejo 1995). The analysis also found that the acreage of agricultural production declined through the duration of the dry period, resulting in continuous longer term fallowing. Therefore, the EIR concludes that reduced water deliveries could lead to long-term fallowing and conversion.

## ***Response to comment ST47-138***

As described in Sections 2A and 2B, projects or programs described in the Revised Project and/or Alternatives 1A, 1B, 2, and 3 are referred to as "named projects." Delta Plan recommendations WR R8 through WR R13 include actions to be encouraged for inclusion in future Bulletin 118 updates.

DWR Bulletin 118 is not a potential water project.

Page 7-27, lines 45-46

Again, some indication of the scale of potential conversion of agricultural or forest lands due to projects named in, or encouraged by, the Delta Plan is needed before one can reasonably conclude that "this potential impact is considered **significant**" [emphasis in the original.] This conclusion is not supported by the evidence presented.

#### 7.4.3.2 Delta Ecosystem Restoration

Page 7-29, line 4

The phrase, "including removal of invasive vegetation," should be changed to, "including the reduction or removal of non-native invasive vegetation, fish, and wildlife."

Pages 7-29, lines 28-31

In response to the "reduced export of water from the Delta," it is indeed true that, "Water users in the areas outside the Delta that use Delta water would likely respond to reduced supplies by constructing facilities to improve water supply reliability and improve water quality." Other actions would include an increase in ground water extractions, including those from overdrafted aquifers, in an attempt to replace most of the water lost due to the reduction in Delta water exports,

farmland fallowing, orchard abandonment, switching some acreage to crops which return less net income but which use less water, and purchasing transfer water from lands to the east and north of those which had relied on a certain level of Delta water exports.

These actions would all have environmental impacts in wide areas of California. And some of those impacts, such as land subsidence, lost habitat for wildlife, increased carbon emissions, and increased soil erosion, would be negative.

#### 7.4.3.2.1 Impact 7-1b: Conversion of Farmland to Nonagricultural Use

Page 7-30, lines 40-42

As discussed above, change the statement to to "It is likely that the agricultural resources impacts of projects encouraged by the Delta Plan could be mitigated to a less-than-significant level for short-term construction impacts, but may not be for more permanent conversions of farmland; for example, when a project cannot be redesigned to avoid farmland conversion."

### *Response to comment ST47-139*

Please refer to response to comment ST47-54.

### *Response to comment ST47-140*

The referenced phrase is consistent with the description of the Delta Plan presented in Section 2A of the Draft Program EIR.

### *Response to comment ST47-141*

The impacts associated with development of local and regional water supplies are described in the Reliable Water Supply subsections of sections 3 through 21 and further explained in Master Response 5.

### *Response to comment ST47-142*

Please refer to response to comment ST47-54.

Page 7-31, lines 2-7

Again, the text should state for which area the "potential impacts" are "considered significant." Are the impacts considered significant to "agricultural resources" in the Delta, in the six counties which contain the Delta, in the Delta watershed, in Northern California, or for the entire state? Also, this EIR section needs to present more evidence to support this important conclusion.

ST47-143

**7.4.3.2.2 Impact 7-2b: Conflict with Existing Zoning for Agricultural Use or a Williamson Act Contract**

Page 7-31, line 15

The text states: "These temporary effects could become permanent where areas are cleared for replanting or restoration of nonagricultural habitats, such as tidal marsh, riparian corridors, and grassland." Throughout California, grasslands are used for grazing sheep or cattle, which is an agricultural use.

ST47-144

**7.4.3.2.3 Impact 7-3b: Conflict with Existing Zoning for, or Cause Rezoning of, Forestland, Timberland, or Timberland Zoned for Timberland Production**

Page 7-32, lines 40-42

Since some of the projects encouraged by the Delta Plan involve, at least in part, restoring riparian forest habitat, the Delta Plan could result in a net gain in the acreage of valuable riparian forests in the Delta region. Please add this net benefit to the analysis.

ST47-145

Page 7-33, line 9

Also, more evidence should be presented in this part of the PEIR to support the conclusion that there are potential significant adverse impacts to various regions analyzed by the PEIR.

ST47-146

**7.4.3.2.4 Impact 7-4b: Loss of Forestland or Conversion of Forestland to Nonforest Use**

Page 7-33, lines 12-14

The document should distinguish between the acres of forests and timberlands in the Delta versus the acres in the "five Delta counties."

ST47-147

Page 7-33, lines 17-18

ST47-148

***Response to comment ST47-143***

Please refer to response to comment ST47-54.

***Response to comment ST47-144***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

***Response to comment ST47-145***

The EIR considers the Delta Plan's significant adverse impacts on the physical environment, and is not required to analyze beneficial impacts.

***Response to comment ST47-146***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST47-147***

Please refer to response to comment ST47-146.

***Response to comment ST47-148***

Please refer to the response to comment ST47-146.

For what year or years do these estimates apply? The date the surveys were done should be reported, not the year or years in which the reports that contained these estimates were published.

Page 7-34, lines 11-12

The document states that "the potential impacts [on forest resources] of projects encouraged by the Delta Plan are considered **significant**." The document should provide more evidence to support this conclusion. The text uses phrases such as "there are no project-specific details or associated reviews" concerning the impacts on forests of the projects encouraged by the Delta Plan, that impacts "could occur," and that "it is not known at this time" what the impacts might be. As suggested before, the Department recommends that the conclusion be that that the potential impacts "may be considered **significant**."

**7.4.3.2.5 Involve Other Changes in the Existing Environment That, Because of Their Location or Nature, Could Result in Conversion of Farmland to Nonagricultural Use or Conversion of Forestland to Nonforest use**

Page 7-34, lines 30-32

Data should be provided to support the claim that "disturbance and removal of existing vegetation as a part of construction activities could result in the spread of invasive species to new areas, negatively affecting the health or viability of surrounding agricultural or forest uses."

Page 7-35, lines 17-19

Suggest changing the text to "the potential impacts of projects encouraged by the Delta Plan may be considered **significant**"

**7.4.3.3 Water Quality Improvement**

Page 7-35, line 31

The phrase, "Agricultural runoff treatment" should be changed to "Agricultural water runoff reduction and reuse." Throughout California there are programs to reduce and reuse agricultural runoff. The Department is not aware of any programs to treat that runoff, as one treats, for instance, urban wastewater.

**7.4.3.3.1 Impact 7-1c: Conversion of Farmland to Nonagricultural Use**

Page 7-37, lines 4-5

***Response to comment ST47-149***

Please refer to response to comment ST47-54.

***Response to comment ST47-150***

Please see response to comment ST47-135.

***Response to comment ST47-151***

Please refer to response to comment ST47-54.

***Response to comment ST47-152***

The Grasslands Bypass program, as discussed in Section 2B of the Draft Program EIR, is an example of a program that considers treatment of agricultural runoff or drainwater.

***Response to comment ST47-153***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

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It is stated that: "The Davis-Woodland Water Supply Project identified a significant and unavoidable impact related to conversion of agricultural land." The PEIR should provide more information on years of data regarding crops, cropping years, and acreage to support conclusions and to allow the reader to begin to understand the significance to local and regional agriculture and agricultural resources of the conversion of any agricultural lands due to the Davis-Woodland Water Supply Project.

ST47-153

Page 7-37, lines 22-23

Suggest changing the document to state: "However, because named projects and projects encouraged by the Delta Plan could result in conversion of agricultural land to nonagricultural use, this potential impact may be considered significant."

ST47-154

Page 7-38, Lines 18-19

The EIR/EIS for the Davis-Woodland Water Supply Project is not on-line. However, there is a detailed summary of that EIR/EIS, at <http://ice.ucdavis.edu/education/esp179/?q=node/185>. That summary made no mention of any "significant and unavoidable impact related to conversion of agricultural land." Therefore, it is difficult for the reader to understand the data behind assumptions and conclusions in this PEIR.

ST47-155

Page 7-38, line 33

Suggest changing the conclusion to, "...this potential impact may be considered significant." 1

ST47-156

**7.4.3.3.3 Impact 7-3c: Conflict with Existing Zoning for, or Cause Rezoning of, Forestland, Timberland, or Timberland Zoned for Timberland Production**

Page 7-39, lines 27- 29

Suggest changing the conclusion to, "... this potential impact may be considered significant."

ST47-157

**7.4.3.3.4 Impact 7-4c: Loss of Forestland or Conversion of Forestland to Nonforest Use**

Page 7-40, lines 27- 29

Suggest changing the conclusion to: "However, because named projects and projects encouraged by the Delta Plan could result in conversion of forestlands to nonforest use, this potential impact may be considered significant." No indication of the scale of likely, or even possible, forest impacts is given. Also, some habitat restoration projects encouraged by the Delta Plan would likely result in the creation of new riparian

ST47-158

### ***Response to comment ST47-154***

Please refer to response to comment ST47-54.

### ***Response to comment ST47-155***

The Davis-Woodland Water Supply Project Draft and Final EIRs are available at <http://www.wdcwa.com/documents>. The Draft EIR for the Davis-Woodland Water Supply Project addresses the impact of converting agricultural lands and found it to be significant (pages 3.5-23 and -24) (City of Davis 2007).

### ***Response to comment ST47-156***

Please refer to response to comment ST47-54.

### ***Response to comment ST47-157***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### ***Response to comment ST47-158***

In response to this comment, please see text change(s) in Section 5 in this FEIR. Regarding the potential environmental benefits of projects under the Delta Plan, please see response to comment ST47-145.

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forest habitat, which is quite valuable to fish, birds, and wildlife, and for the sequestration of carbon.

**7.4.3.3.5 Involve Other Changes in the Existing Environment That, Because of Their Location or Nature, Could Result in Conversion of Farmland to Nonagricultural Use or Conversion of Forestland to Nonforest Use**

Page 7-41, line 40

Suggest changing the conclusion to "...this potential impact may be considered significant."

**7.4.3.4.1 Impact 7-1d: Conversion of Farmland to Nonagricultural Use**

Page 7-43, line 22

Suggest changing the conclusion to states "...this potential impact may be considered **significant**." The text on this page, preceding the conclusion states "This [North Delta Flood Control and Ecosystem Restoration Project] EIR found that agricultural resources impacts were either less than significant or less than significant with mitigation ..." [from Lines 6 and 7.] The document needs to note that encouragement of flood risk reduction projects may ultimately protect Delta farmlands and may have a net positive effect.

Page 7-44, lines 2-4

The text states that "Implementing the Proposed Project could increase investments in levee improvements in the Delta. The improvements could primarily be to existing levees and typically would not alter their basic shape and configuration, except for the use of setback levees." This may be an inaccurate generalization. Large seismic resistant levees with broad footprints may differ in basic shape and configuration than typical Delta levees. In addition, most these levee improvement programs will proceed with or without the Proposed Project.

Page 7-44, lines 26-28

Suggest changing the conclusion to state: "...this potential impact may be considered significant."

**7.4.3.4.3 Impact 7-3d: Conflict with Existing Zoning for, or Cause Rezoning of, Forestland, Timberland, or Timberland Zoned for Timberland Production**

Page 7-45, lines 1-31

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ST47-158

ST47-159

ST47-160

ST47-161

ST47-162

ST47-163

***Response to comment ST47-159***

Please refer to response to comment ST47-54.

***Response to comment ST47-160***

Please refer to responses to comment ST47-54 and ST47-145.

***Response to comment ST47-161***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

As described in the response to comment ST47-98 and subsection 2.3.2.4 of the Draft Program EIR, it is assumed that existing levee maintenance and repair programs would be continued until existing funds from State bonds are fully utilized. However, if adequate local funds are not available, the potential for levee failure could increase. Implementation of additional levee improvement programs may not be reasonably expected to occur in the foreseeable future under the No Project Alternative based on current plans and existing levees. Therefore, it is anticipated that the potential risk to Delta land uses and communities and water supplies that rely upon Delta water would have increasing risk in the future. The EIR assumes that other agencies will be encouraged under the Proposed Project policies and recommendations to implement recommended actions in the Delta Plan including funding those actions.

***Response to comment ST47-162***

Please refer to response to comment ST47-54.

***Response to comment ST47-163***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

Again there is a stated concern that "potential conflicts with forestland zoning and TPZ could occur" near 16 cities in or near the Delta, without any indication of how many acres or square miles of land near those cities is zoned for forestland or Timber Production Zones. That information should be readily available from CDF. Most forests in the Delta are thin strips of riparian forests and fields with a few oak trees in them. Suggest changing the conclusion to, "this potential impact may be considered **significant.**"

ST47-163

Page 7-46, lines 13-33

This section is full of uncertainty:

- "Operation of these facilities *could* convert forestland ..."
- "The details of many of the aspects of these projects, however, are *not currently known* ..."
- "... *it is possible* that significant impacts ..."
- "It is *not known* at this time ..."

ST47-164

This section also lacks any indication of scale, or estimates or forecasts of measured impacts, such as acres of converted land or dollars of lost revenue. Suggest changing the conclusion to: "However, because named projects and projects encouraged by the Delta Plan could result in conversion of forestlands to nonforest use, this potential impact may be considered significant."

**7.4.3.4.5 Involve Other Changes in the Existing Environment That, Because of Their Location or Nature, Could Result in Conversion of Farmland to Nonagricultural Use or Conversion of Forestland to Nonforest Use**

Pages 7-47 to 7-48, line 21 Line 7, respectively

The PEIR text cites the "North Delta Flood Control and Ecosystem Restoration Project" as an "analogous project," similar to one encouraged by the Delta Plan. It then summarizes conclusions from that project's EIR: "This EIR found that agricultural resources impacts were less than significant with mitigation ...". Then the draft Delta Plan PEIR states that:

Based on this example, it is likely that some agricultural resources impacts of named projects and projects encouraged by the Delta Plan could be mitigated to a less-than-significant level.

ST47-165

For other named projects where an environmental impact analysis has not been prepared, it is expected that this impact analysis provides a reasonable analysis of potential effects that would occur if the projects of a similar nature and similar setting were implemented. Yet this section of the draft Delta Plan EIR concludes: "However, because named projects and projects encouraged by the Delta Plan could indirectly

## Response to comment ST47-164

In response to this comment, please see text change(s) in Section 5 in this FEIR.

## Response to comment ST47-165

Please refer to response to comment ST47-54.

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ST47-165

result in conversion of forest or agricultural lands, this potential impact is considered **significant.**" Suggest changing the conclusion to one of "not significant" or at the most to be "may be significant"

#### 7.4.3.5 Protection and Enhancement of Delta as an Evolving Place

Page 7-48, lines 19-21

The statement is made that "The [Delta] Economic Stability Plan is not an activity that would generate agriculture or forestry resources impacts; therefore, it is not discussed further in this section." We suggest more discussion of the Plan. If even some of the activities, programs, and projects called for or encouraged by this plan were to be implemented, they could have profound and significant impacts on Delta agriculture.

ST47-166

#### 7.4.3.5.1 Impact 7-1e: Conversion of Farmland to Nonagricultural Use

Page 7-48, lines 34-37

The text claims that "These facilities could adversely impact agricultural land locally, particularly if these lands have specific soil conditions (such as peat soils in the Delta) that support high-value crops that cannot be readily grown elsewhere in the Delta watershed by converting such land to nonagricultural use." As stated previously, the only crop, of high or low value, that is grown commercially in the Delta, and which "cannot be readily grown elsewhere in the Delta watershed," is asparagus, whose acreage has been in sharp decline (due to economic reasons) in the Delta during the past ten years. Any Delta asparagus acreage that is lost, and cannot be replaced by growing asparagus on other Delta acreage, could be replaced by new asparagus acreage in the Salinas Valley.

ST47-167

Page 7-49, lines 5-6

The text states that "...the San Luis Rey River Park project found significant and unavoidable impacts related to conversion of farmland to nonagricultural use, because the park itself was sited on farmland." Department staff reviewed the San Luis Rey River Park Master Plan<sup>1</sup>, and did not draw the same conclusion.

According to the Master Plan, the large majority of the proposed 1,640-acre park is not situated on farmland. Only one section, of only 54 acres, is classified as "agricultural land." Based on the photo of that land in the report, it appears to be low-value grazing land. No claim is made that it is prime farmland. The loss of such land

ST47-168

<sup>1</sup> [http://www.co.san-diego.ca.us/reusable\\_components/images/parks/doc/mpaccondensed.pdf](http://www.co.san-diego.ca.us/reusable_components/images/parks/doc/mpaccondensed.pdf)

### *Response to comment ST47-166*

This comment references the Delta Protection Commission Economic Sustainability Plan, which was incorrectly referenced in the Draft Program EIR as the Economic Stability Plan. The Economic Sustainability Plan provides substantial background information on the Delta and Delta communities, along with a set of recommendations for economic sustainability. These recommendations do not include provisions that would adversely affect agriculture or forestry in the Delta. For further discussion of the EIR's approach to the Economic Sustainability Plan, please see Master Response 1.

### *Response to comment ST47-167*

Comment noted.

### *Response to comment ST47-168*

The description of the San Luis Rey River Park in the discussion of Impact 7-1e on page 7-49 of the Draft Program EIR is based on review of the Final EIR prepared for the San Luis Rey River Park project (San Diego County Department of Parks and Recreation 2008). Land classified as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, or Farmland of Local Importance was identified in the proposed park sites (page 2.2-1 of the Final EIR). The analysis concluded that development of park components on sites designated as Tier A in the Final EIR would occur on lands identified as Important Farmland and that development of the park on these sites would preclude agricultural activities from occurring and/or render the lands unusable for agricultural purposes, resulting in a significant direct long-term impact (page 2.2-4 of the Final EIR). Therefore, the description of impacts on agricultural lands from development of the San Luis Rey River Park in the discussion of Impact 7-1e is correct.

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would not appear to have a significant environmental impact affecting the agricultural or natural resources of San Diego County. During each year of recent decades in that county, hundreds of acres of much-higher valued farmland were lost to normal urban development pressures and economic forces, such as high and rising water costs, reduced water supply reliability, and increased competition from low-cost foreign producers.

The actual, entire conclusion of San Luis Rey River Park Master Plan is as follows: "The San Luis Rey River Park will be an outstanding recreational and open space legacy for San Diego County residents. The park balances accommodation of the recreational needs of surrounding communities with the establishment of a large open space preserve, protecting one of the most biologically-diverse segments of the SLR river corridor, and critical habitat for several threatened and endangered species. Encouraged interaction with the park's wealth of cultural/ biological resources will instill park users with a broad understanding and appreciation for the river's dynamic natural systems and the ecological richness that attracted Native Americans to inhabit the corridor thousands of years ago."

ST47-168

Based upon the San Luis Rey River Park Master Plan, the Department does not believe that the proposed park would have a noticeable impact on county agriculture and should not be used to support the conclusions that certain potential impacts of projects encouraged by the Delta Plan would be "significant."

Page 7-49, line 18

Suggest changing the conclusion to be "...this potential impact may be considered **significant**."

ST47-169

#### 7.4.3.5.2 Impact 7-2e: Conflict with Existing Zoning for Agricultural Use or a Williamson Act Contract

Page 7-49, lines 25-27

It is stated that "... these activities could potentially be in conflict with agricultural zoning or Williamson Act contracts if water supply projects are not permitted uses under such contracts ..." The activities described in this section are habitat restoration projects encouraged or named by the Delta Plan, not "water supply projects."

ST47-170

Page 7-50, line 21

Suggest changing the statement to say "...this potential impact may be considered **significant**."

ST47-171

### *Response to comment ST47-169*

Please refer to response to comment ST47-54.

### *Response to comment ST47-170*

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### *Response to comment ST47-171*

Please refer to response to comment ST47-54.

**7.4.3.5.3 Impact 7-3e: Conflict with Existing Zoning for, or Cause Rezoning of, Forestland, Timberland, or Timberland Zoned for Timberland Production**

Page 7-50, lines 29-31

The document states that "However, because there is no existing timber or forest zoning or TPZ in the Delta counties in which activities enhancing the Delta as an evolving place would occur, there would be **no impact** at the program level." This finding is inherently reasonable, but it contradicts several earlier assertions where the PEIR text states or implies that there is indeed "existing timber or forest zoning or TPZ in the Delta counties." In fact, the EIR text lists more than a dozen communities in or near the Delta and states that there is – or at least could be – forest land or land zoned for timber production near the Delta-area communities. Therefore, the text concluded "...this potential impact is considered **significant**."

ST47-172

Yet in this case, the text states that there is no such forestland in or near the Delta, therefore "...there would be **no impact** ...". This conclusion, which appears to be supported by the evidence presented, appears to contradict several earlier and subsequent conclusions in this PEIR concerning forest resources.

**7.4.3.5.4 Impact 7-4e: Loss of Forestland or Conversion of Forestland to Nonforest Use**

Page 7-51, lines 2-3

The statement is made that "Forestlands in the Delta watershed that are most likely to be located near future construction sites ...". There are indeed a lot of forests in the Delta watershed, but it is difficult to see how they would be impacted by projects in the Delta designed to "protect and enhance the Delta as an evolving place." It appears as if text from one section of the Delta Plan PEIR was possibly copied and pasted onto another section of the PEIR without careful consideration as to whether it applied to the situation described in the new section.

ST47-173

Page 7-51, lines 24-26

Suggest that the text be changed to "However, because named projects and projects encouraged by the Delta Plan could result in conversion of forestlands to nonforest use, this potential impact may be considered significant."

ST47-174

**7.4.3.5.5 Impact 7-5e: Involve Other Changes in the Existing Environment That, Because of Their Location or Nature, Could Result in Conversion of Farmland to Nonagricultural Use or Conversion of Forestland to Nonforest Use**

Page 7-52, lines 22-24

ST47-175

***Response to comment ST47-172***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST47-173***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST47-174***

Please refer to the response for comment ST47-173.

***Response to comment ST47-175***

Please refer to response to comment ST47-168.

The document states that: "... the San Luis Rey River Park project found significant and unavoidable impacts related to conversion of farmland to nonagricultural use." Please refer to the above comments on Pages 7-12 and 13 concerning the real impacts of the San Luis Rey River Park project, as described in the Master Plan for that project.

Page 7-52, lines 33-34

Suggest changing the text to: "...this potential impact may be considered significant."

#### 7.4.3.6 Mitigation Measures

##### 7.4.3.6.1 Mitigation Measure 7-1

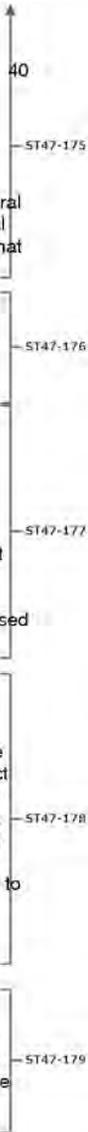
While the Department considers the mitigation measures listed to be ones that should be considered by project proponents, we suggest that the document require project proponents to consider the mitigation measures and adopt them where applicable. We have provided some additional comments on some of the six proposed mitigation measures listed in this section:

Page 7-53, lines 14-15

Attempting to avoid or reduce the loss of the highest valued farmland (a.k.a. "prime farmland") when a project is adopted is a worthy goal. But it should not be the only goal or even the most important goal. Modifying a proposed water supply project or habitat restoration project or "Delta as a place enhancement" project to reduce the loss of prime farmland "to the greatest extent feasible" may turn a good project into a less desirable one. This requirement could turn a project with an overall, net positive impact on the environment to one which has an overall, net negative environmental impact. The cultivation and irrigation of some prime farmland can be quite damaging to the environment. It can also produce an overall net economic loss to society as a whole. Converting such farmland to certain non-agricultural uses, such as habitat restoration, could be quite beneficial to the environment and to society.

Page 7-53, lines 19-23

This paragraph may demand too much of "project proponents," who are given responsibility for "acquiring easements, making lot line adjustments, and merging affected land parcels" instead of using the market, subject to the appropriate land use regulations, and with the approval, where required, of the local governmental authorities.



### *Response to comment ST47-176*

Please refer to response to comment ST47-54.

### *Response to comment ST47-177*

Please refer to response to comment ST47-54 and Master Response 4.

### *Response to comment ST47-178*

In response to this comment, please see text change(s) in Section 5 of the FEIR.

### *Response to comment ST47-179*

Comment noted. The measures listed in the EIR sufficiently cover this suggested action. Please also see Policy G P1 regarding mitigation.

Page 7-53, lines 24-28

This proposed requirement may not be practical in many cases. It also elevates agricultural uses of land affected by projects above all other uses. For all sorts of construction projects, a temporary interruption of access to roads or utilities is quite common, and simply unavoidable. Although a permanent loss of such access may call for appropriate compensation, it is not feasible to require creating alternate access in all cases for disruptions which could last only a few hours to a few days. This provision could derail many otherwise worthwhile proposed projects.

ST47-180

Page 7-53, lines 29-37

This proposed requirement is unclear, contains contradictions, and is confusing. This should be rewritten for the following reasons:

- The first sentence refers to invasive species impacts "on adjacent agricultural land," while the second sentence refers to such impacts on "nearby agricultural lands." Please clarify the required proximity.
- The second sentence switches subjects when it states, "where a project has the potential to introduce sensitive species or habitats ..." Sensitive species are not the same as invasive species.
- The next-to-last sentence discusses "... temporary or intermittent interruption in farming activities (e.g., because of seasonal flooding or groundwater seepage)" rather than invasive or sensitive species.
- Finally, key terms, such as "sensitive species," should be defined, and the paragraph, which deals with two different subjects, should be split in two.

ST47-181

Page 7-54, lines 14-16

It is stated that "In cases where substantial areas of lands would still be converted from agricultural use, these related impacts would remain significant." This would depend on a number of factors, including the nature of the agricultural lands being converted, the services those lands provide, and the amount of converted land when compared to the total agricultural land of that type in the study area. Certainly the impacts could remain potentially significant, if "substantial" agricultural lands were converted. But it may be too much to insist that they would be significant in all such cases.

ST47-182

#### 7.4.3.6.2 Mitigation Measure 7-2

Page 7-54, lines 33-35

ST47-183

### *Response to comment ST47-180*

Comment noted. As stated in Impact Discussion 7-5a, "In addition to direct impacts described in Sections 7.4.3.1.1 (Impact 7-1a), 7.4.3.1.2 (Impact 7-2a), 7.4.3.1.3 (Impact 7-3a), and 7.4.3.1.4 (Impact 7-4a), construction activities related to reliable water supply projects could affect nearby forest or agricultural lands because of noise, access constraints, dust, or other mechanisms that would indirectly result in conversion of these lands to other uses." The EIR also states that "These temporary effects could become permanent where areas are cleared for buildings, facilities, paved roads and storage / staging, and other project features." Therefore, it is appropriate to include mitigation measures for temporary impacts.

### *Response to comment ST47-181*

Comment noted. Please see change(s) to this measure in Section 5 of the FEIR.

### *Response to comment ST47-182*

Please refer to response to comment ST47-54.

### *Response to comment ST47-183*

Please refer to response to comment ST47-54.

Impacts could be significant, but it is not correct to state or imply that in all cases where "substantial areas of incompatibility would exist" with Williamson Act protections or agricultural zoning, the impacts would always be significant.

**7.4.3.6.4 Mitigation Measure 7-4**

Page 7-55, lines 25-26

The wording here is too absolute, as it is in some similar earlier paragraphs which refer to land zoned for agriculture, or placed in agricultural preserves.

Page 7-55, lines 36-37

Conversion of "substantial" agricultural or forestlands might not always result in significant environmental impacts, depending on the quality of the lands being converted, what those lands are converted to, over how many years those conversions take place, and the proportion of total agricultural or forest lands that would still remain in the region impacted by the proposed project. The wording "would remain significant" should be changed to "could remain significant."

**7.4.5.1.1 Impact 7-1: Conversion of Farmland to Nonagricultural Use**

Page 7-57, lines 12-13

Suggest changing the text to "As compared to existing conditions, the impacts related to conversion of farmland under Alternative 1A may be **significant**."

**7.4.5.1.2 Impact 7-2: Conflict with Existing Zoning for Agricultural Use or a Williamson Act Contract**

Page 7-57, line 32

Suggest changing the conclusion to impacts under "...Alternative 1A could be significant."

**7.4.5.1.3 Impact 7-3: Loss of Forestland or Conversion of Forestland to Nonforest Use**

Page 7-58, lines 7-8

No estimates of the likely scales of impacts are presented.

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ST47-183

ST47-184

ST47-185

ST47-186

ST47-187

ST47-188

***Response to comment ST47-184***

Comment noted. See current version of Mitigation Measure 7-4 in the Recirculated Draft EIR and Section 5 of this FEIR.

***Response to comment ST47-185***

Please refer to response to comment ST47-54.

***Response to comment ST47-186***

Please refer to response to comment ST47-54.

***Response to comment ST47-187***

Please refer to response to comment ST47-54.

***Response to comment ST47-188***

Please see Master Response 2 for a discussion of the EIR's programmatic approach to the analysis of environmental impacts.

**7.4.5.1.4 Impact 7-4: Conflict with Existing Zoning for, or Cause Rezoning of, Forestland, Timberland, or Timberland Zoned for Timberland Production**

Page 7-58, lines 23-25

The term "would be" should be changed to "could be" in each of these lines. Under all the Project alternatives, potential future conflicts with lands zoned to protect forests could be heightened, reduced, or eliminated, as the zoning laws and regulations covering the Delta evolve over time.

ST47-189

**7.4.5.1.5 Impact 7-5: Involve Other Changes in the Existing Environment That, Because of Their Location or Nature, Could Result in Conversion of Farmland to Nonagricultural Use or Conversion of Forestland to Nonforest Use**

Page 7-59, lines 1-2

Suggest changing language to say that impacts may be significant

ST47-190

**7.4.6.1.1 Impact 7-1: Conversion of Farmland to Nonagricultural Use**

Page 7-59, lines 38-39

The preceding four paragraphs of the chapter explain the many major differences between the Proposed Project and "Alternative 1B." However, the PEIR concludes that, "The same type of agricultural land conversion impacts would occur under Alternative 1B as described under the Proposed Project." Please explain how, if the projects are so different, they have the same type of agricultural land conversion impacts.

ST47-191

Page 7-60, lines 11-12

Suggest changing the text to "As compared to existing conditions, the impacts related to conversion of farmland under Alternative 1B may be **significant**."

ST47-192

**7.4.6.1.2 Impact 7-2: Conflict with Existing Zoning for Agricultural Use or a Williamson Act Contract**

Page 7-60, lines 32 -33

Suggest changing conclusion to "the impacts related to conflicts with existing agricultural zoning or Williamson Act contracts under Alternative 1B may be significant."

ST47-193

### ***Response to comment ST47-189***

Comment noted, however; throughout the EIR, the word "would" has been used because this EIR takes a conservative approach and assumes that most significant adverse impacts would occur, and would be significant, as described in Section 2B of the Draft Program EIR.

### ***Response to comment ST47-190***

Please refer to response to comment ST47-54.

### ***Response to comment ST47-191***

As described in Section 2A of the Draft Program EIR, under Alternative 1B, the Delta Plan would include only recommendations, rather than mandatory policies. Thus, the various actions encouraged by the plan would be less likely under Alternative 1B than under the Revised Project's; the alternative's impact would be similar to the Revised Project's, but smaller in magnitude.

### ***Response to comment ST47-192***

Please refer to response to comment ST47-54.

### ***Response to comment ST47-193***

Please refer to response to comment ST47-54.

**7.4.6.1.3 Impact 7-3: Loss of Forestland or Conversion of Forestland to Nonforest Use**

Page 7-61, lines 11-12

Suggest changing the conclusion to state that "the impacts related to loss of forestland or conversion of forestland to nonforest uses under Alternative 1B may be significant." A sense of the scale of likely forestland conversions relative to existing forestlands in the various regions of the study area should be provided.

ST47-194

**7.4.6.1.4 Impact 7-4: Conflict with Existing Zoning for, or Cause Rezoning of, Forestland, Timberland, or Timberland Zoned for Timberland Production**

Page 7-61, lines 32-33

Suggest changing the conclusion to "the impacts related to conflicts with existing forestland and timberland zoning under Alternative 1B may be significant."

ST47-195

**7.4.6.1.5 Impact 7-5: Involve Other Changes in the Existing Environment That, Because of Their Location or Nature, Could Result in Conversion of Farmland to Nonagricultural Use or Conversion of Forestland to Nonforest Use**

**7.4.6.2 Mitigation Measures**

Page 7-62, lines 18-19:

Suggest changing the conclusion to, "these potential impacts [under Alternative 1B] are may be considered **significant and unavoidable**."

ST47-196

**7.4.7.1.1 Impact 7-1: Conversion of Farmland to Nonagricultural Use**

Page 7-63, lines 1-2

The document states that "...Alternative 2 would encourage the retirement or fallowing of about 380,000 acres of agricultural land within the San Luis Drainage Area ...". Note that there is a large difference, in terms of agricultural impacts, socioeconomic impacts, and environmental impacts, whether a plot of farmland is retired or fallowed. In the PEIR's study area, farmland retirement is permanent – the land is no longer irrigated. Sometimes it is simply abandoned. Other times it is converted to non-agricultural uses. And sometimes, depending on its location and the agricultural economy, it is grazed by sheep or cattle, or is occasionally used to grow dryland grains or safflower. These activities usually return to the land's owners only a

ST47-197

***Response to comment ST47-194***

Please refer to responses to comments ST47-54 and ST47-188.

***Response to comment ST47-195***

Please refer to response to comment ST47-54.

***Response to comment ST47-196***

Please refer to response to comment ST47-54.

***Response to comment ST47-197***

As described in Section 2A, Alternative 2 would limit Delta exports to a total of 3 million acre-feet/year and SWP and CVP water contract amounts to values that could be reliably delivered at least 75 percent of the time. The water users could respond by increased use of the remaining limited groundwater, desalinated ocean water and groundwater, water transfers, periodic fallowing, or permanent land retirement. Because retirement (and thus conversion to non-agricultural use) is a potential result, the impact is considered significant.

small fraction of the gross and net revenues that the land produced when it was irrigated.

ST47-197

Farmland fallowing, however, is temporary. A field is not irrigated or cultivated for a year or two, and then it is returned to production for at least one year, and usually a lot longer. In California, farmland fallowing is sometimes done for economic or agronomic reasons, and it is sometimes done to make water available for sale and transfer. This PEIR needs to describe how many acres would be permanently retired from irrigated production and how many acres would be periodically or occasionally fallowed within the San Luis Drainage Area.

Page 7-63, lines 4- 6

The text states that "This alternative would influence about the same amount of habitat restoration ..., although there would be greater emphasis on floodplain restoration. Thus, the level of farmland conversion resulting from ecosystem would be about the same as the Proposed Project." Based upon this PEIR's description of Alternative 2, it appears that this alternative would encourage a somewhat greater amount of California farmland to be restored to habitat. This would occur mainly through Alternative 2's "greater emphasis on floodplain restoration."

ST47-198

Page 7-63, lines 10-11

The text states that "...under Alternative 2, there would be fewer levee improvements compared to the Proposed Project ...". Fewer levee improvements in the study area would, over time, mean more farmland would be inundated, some of it permanently. This would increase the likely agricultural impacts.

ST47-199

#### 7.4.7.1.2 Impact 7-2: Conflict with Existing Zoning for Agricultural Use or a Williamson Act Contract

Page 7-63, line 27

This section states that "...Alternative 2 would have no major water storage facilities ...". This statement appears to conflict with the statement Page 7-62, lines 43 and 44, which describes an important part of Alternative 2: "The development of surface storage in the Tulare Lake Basin could result in the inundation of up to about 320,000 acres of agricultural land..."

ST47-200

Page 7-63, lines 30-32

The "development of surface storage in the Tulare Lake Basin" plus the "greater emphasis on floodplain restoration" under Alternative 2, could increase the "likelihood of conflict with agricultural zoning or Williamson Act contracts."

ST47-201

### *Response to comment ST47-198*

Floodplain restoration would be encouraged under Alternative 2 primarily to reduce flood risks by avoidance of non-floodplain land uses in the floodplain with a secondary benefit to improve ecosystem habitat on lands that would not support developed land uses.

### *Response to comment ST47-199*

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### *Response to comment ST47-200*

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### *Response to comment ST47-201*

Please refer to response to comment ST47-200.

Page 7-64, lines 5-6

The text concludes that "Overall, significant impacts related to conflicts with existing agricultural zoning or Williamson Act contracts under Alternative 2 would be less than under the Proposed Project." Please explain this conclusion.

ST47-202

Page 7-64, lines 7-8

Suggest changing this conclusion to "the impacts related to conflicts with existing agricultural zoning or Williamson Act contracts under Alternative 2 may be **significant**." It would be helpful if this PEIR stated how many of the 320,000 acres of agricultural land in the Tulare Lake Basin subject to inundation under Alternative 2 are now protected by the Williamson Act or agricultural zoning, and if that estimate would be a substantial number relative to the total agricultural land in that Basin.

ST47-203

**7.4.7.1.3 Impact 7-3: Loss of Forestland or Conversion of Forestland to Nonforest Uses**

Page 7-64, lines 33-34

Suggest that the conclusion of significant impacts related to forestland conversions be modified to say that the impacts may be considered significant. A sense of the scale of impacted forestlands to total forestlands in the study area or areas would be helpful.

ST47-204

**7.4.7.1.4 Impact 7-4: Conflict with Existing Zoning for, or Cause Rezoning of, Forestland, Timberland, or Timberland Zoned for Timberland Production**

Page 7-65, lines 21-22

Suggest that the conclusion of significant impacts related to forestland zonings be modified to say that the impacts may be considered significant. A sense of the scale of impacted zoned forestlands to total zoned forestlands in the study area would be helpful.

ST47-205

**7.4.7.1.5 Impact 7-5: Involve Other Changes in the Existing Environment That, Because of Their Location or Nature, Could Result in Conversion of Farmland to Nonagricultural Use or Conversion of Forestland to Nonforest Use**

ST47-206

***Response to comment ST47-202***

Please refer to response to comment ST47-200.

***Response to comment ST47-203***

Please refer to response to comment ST47-54 and Master Response 3.

***Response to comment ST47-204***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST47-205***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST47-206***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

Page 7-65, lines 32-33

The text states that "... the overall footprint of possible disturbance areas would be smaller than for the Proposed Project." According to the EIR, under Alternative 2, "The development of surface storage in the Tulare Lake Basin could result in the inundation of up to about 320,000 acres of agricultural land considered Farmland of Statewide Importance." That is a large 'footprint' and appears to be larger than the expected footprint under the Proposed Project.

Page 7-66, lines 5-6

The text concludes that "Overall, significant impacts related to indirect conversion of agricultural land and forestland under Alternative 2 would be less than under the Proposed Project." This conclusion needs more evidence.

Page 7-66, lines 7-8

Suggest changing the conclusion to "As compared to existing conditions, the impacts related to indirect conversion of agricultural land and forestland under Alternative 2 may be **significant**."

#### 7.4.7.2 Mitigation Measures

Page 7-66, lines 12-15

The text states that: "Because it is not known whether the mitigation measures listed above would reduce impacts ... to a less-than-significant level for Alternative 2, these potential impacts are considered significant and unavoidable."

#### 7.4.8 Alternative 3

##### 7.4.8.1.1 Impact 7-1: Conversion of Farmland to Nonagricultural Use

Page 7-67, lines 3-4

Suggest changing the conclusion to "the impacts related to conversion of farmland under Alternative 3 may be **significant**."

##### 7.4.8.1.2 Impact 7-2: Conflict with Existing Zoning for Agricultural Use or a Williamson Act Contract

Page 7-67, lines 21-22

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ST47-206

ST47-207

ST47-208

ST47-209

ST47-210

ST47-211

### *Response to comment ST47-207*

Please refer to response to comment ST47-206.

### *Response to comment ST47-208*

Please refer to response to comment ST47-54.

### *Response to comment ST47-209*

Comment noted.

### *Response to comment ST47-210*

Please refer to response to comment ST47-54.

### *Response to comment ST47-211*

Please refer to response to comment ST47-54.

There does not appear to be sufficient evidence to demonstrate that there would be "significant impacts related to conflicts with existing agricultural zoning or Williamson Act contracts under Alternative 3." However, the Department agrees that any such conflicts are likely to be less common under Alternative 3 than under the Proposed Project.

ST47-211

Page 7-67, lines 23-24

Suggest changing the conclusion to "As compared to existing conditions, the impacts related to conflicts with existing agricultural zoning or Williamson Act contracts under Alternative 3 may be **significant**." It would be helpful to have more information, for example, it how many acres of what types of farmland that would be impacted by Alternative 3 projects are protected by the Williamson Act or special agricultural zones and would such protections lead to conflicts with the uses those lands would be put to under Alternative 3? T

ST47-212

**7.4.8.1.3 Impact 7-3: Loss of Forestland or Conversion of Forestland to Nonforest Uses**

Page 7-67, lines 28-30

The document states that "This alternative would have less extensive ecosystem restoration projects ..., resulting in a smaller affected-area footprint and, therefore, a reduced likelihood of loss or conversion of forestland." Sometimes ecosystem restoration projects result in the *creation* of new forestland, or the enhancement and expansion of existing forestland. A newly developed riparian forest has been created during the past 20 years as part of an ecosystem restoration project at the Cosumnes River Preserve, south of Sacramento, in and near the Delta.

ST47-213

Page 7-67, lines 39-42

Suggest changing the conclusion to say that there may be "significant impacts related to loss of forestland or conversion of forestland to nonforest uses under Alternative 3."

ST47-214

**7.4.7.1.4 Impact 7-4: Conflict with Existing Zoning for, or Cause Rezoning of, Forestland, Timberland, or Timberland Zoned for Timberland Production**

Page 7-68, lines 17-20

Suggest changing the conclusions to say that there "may be significant impacts" It would be helpful to compare acres of zoned forestlands in the Delta, Delta region, or Delta watershed with the acres in the "footprints" of proposed Alternative 3-encouraged projects. Earlier sections that dealt with zoned forestlands or timberlands in or near Delta Plan encouraged projects indicated there were very few such acres, when

ST47-215

***Response to comment ST47-212***

Please refer to responses to comments ST47-54 and ST47-188.

***Response to comment ST47-213***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST47-214***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST47-215***

Please refer to responses to comments ST47-54 and Master Response 2 regarding the EIR's approach to the analysis of environmental impacts.

compared to the total forestlands in the Delta watershed. This section states that such impacts or conflicts with forestland zoning would be even less under Alternative 3 than under the Proposed Project data.

**7.4.8.1.5 Impact 7-5: Involve Other Changes in the Existing Environment That, Because of Their Location or Nature, Could Result in Conversion of Farmland to Nonagricultural Use or Conversion of Forestland to Nonforest Use**

Page 7-68, lines 38-41

Suggest changing conclusion to say that there may be "significant impacts related to indirect conversion of agricultural land and forestland under Alternative 3 ..."

**7.4.3.2 Delta Ecosystem Restoration**

Page 7-29, line 4

The phrase, "including removal of invasive vegetation," should be changed to, "including the reduction or removal of non-native invasive vegetation, fish, and wildlife."

Pages 7-29, lines 28-31

The most immediate and widespread response to a significant reduction in water exported from the Delta would be an increase in ground water extractions, including those from overdrafted aquifers, in an attempt to replace most of the water lost due to the reduction in Delta water exports.

Other actions that would likely be taken by urban and agricultural water users in Central and Southern California in response to a reduction in water exported from the Delta include farmland fallowing, orchard abandonment, switching some acreage to crops which return less net income but which use less water, and purchasing transfer water from lands to the east and north of those which had relied on a certain level of Delta water exports.

The Department knows that these actions would occur in the months and years following a reduction in Delta water exports, because it has occurred in the regions that received such water during the drought in California from 2007 through 2009 that saw major reductions in Delta water exports. The increase in ground water usage was significant.

Finally, this part of Chapter 7 should note that these actions which are likely to be taken in response to a reduction in water exports from the Delta – increased ground

***Response to comment ST47-216***

Please refer to response to comment ST47-54.

***Response to comment ST47-217***

Please refer to response to comment ST47-140.

***Response to comment ST47-218***

Please refer to response to comment ST47-141 and Master Response 5.

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water pumping, farmland fallowing and crop shifting, and increased water transfers – would all have environmental impacts in wide areas of California. Some of those impacts, such as land subsidence, lost habitat for wildlife, increased carbon emissions, and increased soil erosion, would be negative.

50

ST47-218

#### 7.4.3.3 Water Quality Improvement

Page 7-35, line 31

The phrase, "Agricultural runoff treatment" should be changed to "Agricultural water runoff reduction and reuse." Throughout California there are programs to reduce and reuse agricultural runoff. The Department is not aware of any programs to treat that runoff, as one treats, for instance, urban wastewater.

ST47-219

#### 7.4.3.5 Protection and Enhancement of Delta as an Evolving Place

Page 7-48, lines 19-21

The Department's Website describes this plan as follows: "The Delta Protection Commission has released the second draft of a Delta economic stability plan. It looks at key elements of the Delta economy, including agriculture, recreation and tourism, and considers strategies to enhance their sustainability."<sup>2</sup> This section of the Delta Plan EIR needs to discuss the "[Delta] Economic Stability Plan."

ST47-220

#### 7.4.3.5.1 Impact 7-1e: Conversion of Farmland to Nonagricultural Use

Page 7-49, lines 5- 6

The text states: "...the San Luis Rey River Park project found significant and unavoidable impacts related to conversion of farmland to nonagricultural use, because the park itself was sited on farmland." Department staff reviewed the San Luis Rey River Park Master Plan<sup>3</sup>, and it makes no such finding Please review conclusion.

ST47-221

### *Response to comment ST47-219*

Please refer to response to comment ST47-152.

### *Response to comment ST47-220*

Please refer to response to comment ST47-166 regarding the Delta Economic Sustainability Plan.

### *Response to comment ST47-221*

Please refer to response to comment ST47-168.

<sup>2</sup> <http://www.water.ca.gov/deltainit/docs/DeltaEnews082511.pdf>

<sup>3</sup> [http://www.co.san-diego.ca.us/reusable\\_components/images/parks/doc/mpocondensed.pdf](http://www.co.san-diego.ca.us/reusable_components/images/parks/doc/mpocondensed.pdf)

**SECTION 8 VISUAL RESOURCES**

**8.3.2.1.1 Waterways**

Page 8-2, line 26

Contrary to the statement made, levees were not constructed to increase flood capacity.

ST47-222

**8.4.3.2.3 Impact 8-3b: New Sources of Substantial Light or Glare**

Page 8-31, lines 1-27

The likelihood of small structures associated with ecosystem restoration is minimal. The potential for new sources of glare is slim, and, therefore, the Department disagrees with the conclusion that potential impacts would be significant.

ST47-223

**8.4.3.4.1 Impact 8-1d: Substantial Degradation of Visual Qualities**

Page 8-37, lines 34-37

The text states that operation of flood control structures or setback levees could permanently affect scenic vistas. This statement is misplaced with respect to the Delta. Existing levees currently limit open views. Setback levees and other flood control structures in the Delta would not impact open views significantly. Setback levees would enhance views from the water side after previously rockered levees are replaced with native riparian forest. Contrary to the conclusion of this section, DWR believes that impacts would not be considered significant.

ST47-224

**SECTION 10 CULTURAL RESOURCES**

This section is well written and provides a succinct and comprehensive overview of cultural resources in the Delta.

ST47-225

**10.4.3.4.2 Impact 10-2d: Discovery of Unrecorded Human Remains**

Page 10-41, lines 1-3

This section concludes that because human remains could be unearthed during flood risk reduction projects the potential impact is considered significant. This is typically not the case. Levees are generally broadened and the height is increased as a result of adding fill. Little excavation is done and this limits the potential for disturbing human remains. Borrow material is typically received from existing borrow sites. On the occasion that remains are found, standard mitigation measures typically can reduce this impact to less-than-significant.

ST47-226

***Response to comment ST47-222***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

***Response to comment ST47-223***

As stated in Section 8.4.3.2.3, “a small number of new structures could introduce reflective materials used on permanent outbuildings, including in areas that currently experience low levels of light and glare. This potential impact would be temporary but significant. Long-term impacts from low levels of light and glare due to new structures would be significant but likely could be mitigated to a less-than-significant level through implementation of standard mitigation measures.”

***Response to comment ST47-224***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST47-225***

Comment noted.

***Response to comment ST47-226***

The paragraph referred to in this comment on page 10-41, Lines 1-3, has not been changed because the Delta Stewardship Council does not direct the construction of specific projects nor would the projects be implemented under the direct authority of the Council, implementation of mitigation measures cannot be directed by the Council. Therefore, it was found that any potential to unearth human remains could be significant. However, in response to this comment, please see text change(s) in Section 5 in this FEIR.

**SECTION 11 GEOLOGY AND SOILS**

**11.5.3.1.7 Impact 11-7a: Exposure of People or Structures to Potential Substantial Adverse Effects, Including the Risk of Loss, Injury, or Death Involving Landslides**

Page 11-44, lines 21-26

This section concludes that construction activities encouraged by the proposed project could result in the increased occurrence of landslides at a significant level. The document should note that within the Delta, the potential for landslides is minimal and the potential for increased landslides is insignificant.

ST47-227

**SECTION 12 PALEONTOLOGICAL RESOURCES**

**12.4.3.4.1 Impact 12-1d: Destruction of Paleontological Resources of Unique Geological Features**

Page 12-19, lines 27-31

This section concludes that potential impacts associated with flood risk reduction projects to paleontological resources would be significant since ground disturbing effects would be similar to water supply reliability actions. This is not the case. As stated above, levees are generally broadened and the height is increased as a result of adding fill. Little excavation is done and this limits the potential for disturbing the ground in the project area. Borrow material is typically received from existing borrow sites. On the occasion that paleontological resources are found, standard mitigation measures typically can reduce this impact to less-than-significant.

ST47-228

**SECTION 13 MINERAL RESOURCES**

**13.3.2 Delta and Suisun Marsh**

Page 13-2, lines 24-29

Mining of sand and gravel and dredging activities provide an important source of material for levee maintenance and rehabilitation in the Delta. The document should also mention the large sand mining operation on Decker Island operated by DI Aggregates. Also, Dutra's mining operations at the San Rafael quarry is a significant source of rock for rip rap and levee protection and emergency flood-fight material. This should be discussed in this section.

ST47-229

***Response to comment ST47-227***

Subsection 11.5.3.1.7 referred to in this comment on page 11-44 of the Draft Program EIR is referring to implementation of reliable water supply projects including water storage projects, treatment plants, and conveyance facilities that would be constructed primarily in areas outside of the Delta, as described in Section 2A of the Draft Program EIR.

***Response to comment ST47-228***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST47-229***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**13.4.3.1.2 Impact 13-2: Result in the Loss of Availability of a Locally Important Mineral Resource Recovery Site Delineated on a Local General Plan, Specific Plan, or Other Land Use Plan**

Page 13-10, lines 20-28

It should be noted that mineral extraction sites can be synergistically coupled with ecosystem restoration through a reclamation plan as required under SMARA. This was accomplished through a cooperative partnership between DFG and the Department on Decker Island starting in the late 1990's. Material was excavated from the island (Unlike most Delta islands in the Western Delta, Decker island is composed of a 20 foot mound of dredged material.) to complete levee rehabilitation on several other Delta islands. A 30-acre ecosystem restoration project was developed on the excavated site. Ecosystem restoration projects may not necessarily negatively impact mineral resource sites and may, instead, aid with compliance with SMARA.

ST47-230

Page 13-11, lines 6-19

It should be noted that the Delta Plan also encourages levee rehabilitation projects that protect oil and gas fields on Delta islands. This positive impact may offset the negative impacts described to a less than significant level.

ST47-231

**SECTION 14 HAZARDS AND HAZARDOUS MATERIALS**

**14.5.3.1.1 Impact 14-1a: Create a Significant Hazard to the Public or the Environment Through the Routine Transport, Use, or Disposal of Hazardous Materials or Through Reasonably Foreseeable Upset and Accident Conditions Involving the Release of Hazardous Materials into the Environment**

ST47-232

Page 14-19, lines 24-30

This section concludes that the potential impact for a hazard to the public associated with projects encouraged by the Delta Plan is significant. The preceding text does not appear to support this conclusion.

**14.5.3.2.2 Impact 14-2b: Be Located on a Site Which is Included on a List of Hazardous Materials Sites Compiled Pursuant to Government Code, Section 65962.5 and, as a Result, Would Create a Significant Hazard to the Public or the Environment**

Page 14-24, lines 1-13

This section concludes that the potential impact associated with ecosystem restoration and hazardous waste sites is significant. This is unlikely. In siting

ST47-233

***Response to comment ST47-230***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

***Response to comment ST47-231***

Comment noted.

***Response to comment ST47-232***

Please see the response to comment ST47-54.

***Response to comment ST47-233***

Please refer to response to Comment ST47-54.

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ST47-233

restoration projects, project proponents typically perform site assessments to avoid such conflicts. The Department believes that the potential for impacts is less than significant.

**14.5.3.4.1 Impact 14-1d: Create a Significant Hazard to the Public or the Environment Through the Routine Transport, Use, or Disposal of Hazardous Materials or Through Reasonably Foreseeable Upset and Accident Conditions Involving the Release of Hazardous Materials into the Environment**

ST47-234

Page 14-19, lines 24-30

This section concludes that the potential impact for a hazard to the public associated with flood risk reduction projects encouraged by the Delta Plan is significant. The preceding text does not support this conclusion.

**14.5.3.4.3 Impact 14-3d: Create a Vector Habitat That Would Pose a Significant Public Health Hazard**

ST47-235

Page 14-31, lines 37-40

Again, this section concludes that the potential to create a vector habitat that poses a health hazard associated with flood risk reduction projects is significant. However, the citations in the preceding text imply just the opposite. The analysis does not justify a finding that the potential impacts would be considered significant.

**14.5.3.6.1 Mitigation Measure 14-1**

Page 14-37, lines 31-35

This section describes a number of mitigation measures and states that these measures would reduce impacts due to hazardous spills to a less-than-significant level. The conclusion then goes on to state that non-covered actions would continue to pose a significant threat of hazardous spills, because these non-covered actions would then be the responsibility and under the jurisdiction of other public agencies. Whether the project is a covered action or not, the project proponents will still have to conduct a CEQA analysis, and the same permitting process will be required. Moreover, there are numerous laws regulating hazardous waste that protect the public. The value added of the Delta Plan's covered action process is not readily apparent in this case.

ST47-236

**SECTION 16 POPULATION AND HOUSING**

**16.3.2.2 Housing**

Page 16-9, lines 14-15

ST47-237

***Response to comment ST47-234***

Please refer to response to Comment ST47-54.

***Response to comment ST47-235***

Please refer to response to Comment ST47-54.

***Response to comment ST47-236***

Comment noted. As commenter suggests, subsequent projects will incorporate requirements as appropriate through CEQA and required permitting processes as applicable to a particular project.

***Response to comment ST47-237***

The sentence referred to in this comment on page 16-9 of the Draft Program EIR is describing existing conditions. The impact analysis of the Proposed Project and the alternatives as compared to the existing conditions is presented in subsection 16.4, which starts on page 16-15 of the Draft Program EIR.

The document states: "Thus, based on the 2010 data, housing is in short supply in the Delta region." If the Policies and Recommendations have actions that adversely affect housing it should be analyzed in the Population and Housing section.

ST47-237

**16.4.3.4.1 Impact 16-1d: Induce Substantial Population Growth in an Area, Either Directly or Indirectly**

Page 16-25, lines 35-44

This section concludes that impacts to growth associated with flood risk reduction projects would likely be less than significant. However, no discussion is made about the growth inducing impacts of rehabilitating levees to a standard at or above the 100 year or 200 year flood elevations. These types of levee improvements will likely result in significant local pressure to develop housing behind these levees. This is especially dangerous on highly subsided islands in the Delta. This very important topic needs to be addressed in detail in this CEQA document.

ST47-238

**16.4.4 No Project Alternative**

Page 16-28, lines 33-44

This section concludes that the No Project Alternative would have fewer potential housing related impacts than the Proposed Project and then goes on to state that the resulting impacts could be significant. This does not comport with the previous section on the Proposed Action (that would have more impacts) where it is concluded that the impacts would be less than significant.

ST47-239

**SECTION 17 PUBLIC SERVICES**

**17.4.3.6.1 Mitigation Measure 17-1**

Page 17-39, lines 11-34

This mitigation measure should also require the Lead Agency to discuss how many workers will be onsite for the construction and operation of future enhancement projects to ensure that public services will not be impacted. The Lead Agency should be required to discuss response times for Emergency Medical Services, Fire Protection, and Police Protection projects to ensure that public services will not be impacted.

ST47-240

**SECTION 18 RECREATION**

**18.3.2.2 Types of Recreation and Recreational Facilities**

Page 18-5, Figure 18-1

ST47-241

***Response to comment ST47-238***

The EIR's analysis of impacts related to housing and population appropriately assumes that the relevant jurisdictions' general plans will continue in their current form. Rehabilitating levees could potentially result in increased pressure to develop the lands behind the levees such growth would not be accommodated in current general plans.

***Response to comment ST47-239***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST47-240***

Comment noted. The measures listed in the EIR sufficiently cover this suggested action.

***Response to comment ST47-241***

The designation of the "Primary Market Area" in Section 18 of the Draft Program EIR is based upon the designation presented on page 6-6 of the Department of Boating and Waterways Sacramento-San Joaquin Delta Boating Needs Assessment (DBW 2002). In part, the Department of Boating and Waterways Sacramento-San Joaquin Delta Boating Needs Assessment states: "The PMA for the Delta was viewed as a trade area in relation to consumer opportunities. That is, the market area was defined based upon the degree of penetration of available consumers...The result of this analysis shifted the PMA slightly with some counties contiguous to the Delta such as Yolo falling out of the PMA because the origin-destination data confirmed that, of the boating activity days generated by Yolo County residents, 70 percent occurred outside both the thirteen-county PMA and Yolo County."

ST47-241

The exclusion of Yolo County from the "Primary Market Area" of the Delta on this map warrants some discussion.

Page 18-4, Figure 18-2

ST47-242

There seems to be little value with this figure. The legend "water facilities" is unclear. Much more information could be conveyed with different icons for different types of recreation facilities and a reference to a listing of the facilities.

Page 18-9, Table 18-2

ST47-243

It is not clear if the Personal Water Craft column refers to "Statewide" or the "Primary Market Area." This needs to be clarified. Extending the data in this table through 2011 would be useful to show impacts of the recent recession on vessel registration.

Page 18-10, lines 16-27

ST47-244

The statement is made that "... 23% of all licensed anglers in the state recreated in the Delta." Please identify the period and frequency of this activity. For example, does this mean they recreated at least once during the last year in the Delta? What is the relationship of fishing and recreating?

Page 18-11, Table 18-4

ST47-245

In the heading, please clarify that the "Statewide" column is a count of licenses and that the "Delta" column is an estimate of those licensees who recreate at least part of their time in the Delta.

#### 18.3.2.2.2 Constraints Related to Aquatic Recreation

Page 18-13, lines 7-13

ST47-246

This discussion on invasive species omits mention of the "new" spongweed threat. This should be addressed in this section of the PEIR.

#### 18.3.2.2.3 Wildlife-Oriented Recreation

Page 18-16, line 41

ST47-247

Does "participation" refer to per-capita participation rates? Please clarify.

Page 18-14, Figure 18-4

ST47-248

### *Response to comment ST47-242*

Figure 18-2 of the Draft Program EIR was included to demonstrate the wide geographic range and extent of recreation facilities in the Delta and Suisun Marsh. The term "water facilities" refers to "waterway" based recreation that is included in the title of this figure.

### *Response to comment ST47-243*

The Personal Water Craft column in Table 18-2 of the Draft Program EIR refers to statewide data. At the time of publication, the data presented is the most recent available data.

### *Response to comment ST47-244*

According to State Parks (1997a, pg. 138), 23 percent of randomly selected licensed anglers responding to the survey indicated they recreated in the Delta by fishing at some point during the survey year.

### *Response to comment ST47-245*

The statewide values are based upon sales of fishing licenses. The Delta values are estimated based upon a calculation that approximately 23 percent of all statewide anglers recreate in the Delta (DPC 2006a, p. 138).

### *Response to comment ST47-246*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### *Response to comment ST47-247*

The term "Participation" refers to percent of respondents who have participated or frequency of participation during past 12 months. The information is from a publication by State Parks (State Parks 2009b, p. 33, Table 26, Recreation Activity Participation of Respondents During the Past 12 Months, 2002 vs. 2008).

### *Response to comment ST47-248*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Is the Legend entry for "Hunting Facility" a misnomer? There is a symbol at Franks Tract where there are no "facilities." If this figure is showing "Public Hunting Lands" instead, then that needs to be clarified. Should there be hunting icons at Stone Lakes and Cosumnes Preserve? Also, public lands shown on Sherman, Twitchell, and Jerseys islands are owned by public agencies but the land is not necessarily open to the public. This figure needs to be corrected.

ST47-248

### 18.3.3.1 Reservoirs and Lakes

Page 18-21 to 18-28, all reservoir tables:

ST47-249

Clarify if the "Ownership/Management" column refers to land ownership or reservoir ownership.

Page 18-21, Table 18-7

This table, entitled "Reservoirs of the SWP and CVP ..." includes reservoirs that are owned by other agencies and are not part of the SWP or CVP, including Englebright, New Bullards Bar, and Camp Far West. Sly Park, which drains to the San Joaquin River in the Delta, should probably be moved to Table 18-8. Several of the listed USBR owned reservoirs may not be "part of the CVP", for example, Lake Berryessa. If the intent was to list all major reservoirs, several are missing.

ST47-250

Also, more visitation data is available than is reported. For example, visitation data for SWP reservoirs including Antelope Lake, Lake Davis, and Frenchman Lake are published annually in DWR's Bulletin 132, Management of the State Water Project and should be used here. DWR also has 1999-2000 studies with visitation data for Stony Gorge and East Park reservoirs. The table or footnotes should state the year for which the visitation is reported.

ST47-251

The USFS does not own the SWP's upper Feather reservoirs, Shasta Lake, Trinity Lake, Lake Red Bluff, and New Bullards Bar Reservoir, nor is Folsom owned by State Parks. The ownership and manager for Sly Park Reservoir appear to be reversed. If land ownership is intended, then please clarify the labels.

ST47-252

Page 18-23, Table 18-8

This table, entitled "Reservoirs of the SWP and CVP ..." includes reservoirs that are not part of the SWP or CVP, including Camanche, New Hogan, New Don Pedro, McClure, and Turlock. Several SWP or CVP reservoirs in this watershed are listed in Table 18-10 instead of this table, including San Luis and O'Neill. If the intent was to list all major reservoirs, several are missing. Also, more visitation data is probably available than is reported. New Don Pedro Reservoir is not owned by Don Pedro Recreation Agency, nor is Turlock Lake or Millerton Lake owned by State Parks. If land ownership is intended to be shown, then the labels should be clarified.

ST47-253

### *Response to comment ST47-249*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### *Response to comment ST47-250*

In response to this comment, please see text change(s) in Section 5 in this FEIR. Sly Park Reservoir (Jenkinson Lake) is located within the Cosumnes River watershed, which drains to the San Joaquin River via the Mokelumne River due to modifications of the delta area of the Mokelumne River. This entry has been moved. Lake Berryessa is not included because it is not located within the Sacramento or San Joaquin valleys.

### *Response to comment ST47-251*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### *Response to comment ST47-252*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### *Response to comment ST47-253*

Please see the response to comment ST47-250.

**18.3.3.2 Rivers**

Page 18-25, lines 3-6

The "conservative estimate" of current visitation, based on the 27-year-old estimate of American River Parkway (ARP) visitation is not accurate or reliable. Many people park outside of Park boundaries and enter through the very numerous entry points along the ARP.

ST47-254

**18.3.3.3 Wildlife Areas**

Page 18-25, Table 18-9

There are many more wildlife areas and refuges in the Delta watershed, as well as many conservation easements than are shown on this table. This table needs to be updated.

ST47-255

**18.3.4.1 Northern California and Central Valley Reservoirs**

Page 18-27, Table 18-10

Please confirm that the reservoirs in this table, entitled "... Reservoirs that Receive Water Exported from the Delta by the SWP and CVP ...", actually receive SWP or CVP water. This is not true for Los Banos, and may not be true for Los Vaqueros or the small lakes on Buena Vista lake bed.

ST47-256

Table 18-10 should add or clarify in Footnote "d" that Los Banos Reservoir does NOT receive "SWP" water. This same error recurs in the text of Subsection 18.3.4.1: Los Banos Reservoir is NOT "part of the SWP"; also, Footnote "5" on Page 18-26 needs to be corrected – Los Banos Reservoir is NOT part of the "CVP" either.

**18.3.4.2 Southern California Reservoirs**

Page 18-28, Table 18-11

Visitation data for SWP reservoirs are published annually in DWR's Bulletin 132, Management of the State Water Project. Castaic Lagoon is not mentioned, nor is the Castaic Boating Instruction Safety Center (BISC). Castaic, Silverwood, and Perris all have paved boat ramps.

ST47-257

Page 18-28, Table 18-12

Please confirm that Lake Piru receives SWP water (as opposed to Piru Creek flows) as stated in the title of the table.

ST47-258

***Response to comment ST47-254***

Visitation for the American River Parkway in Sacramento County was estimated to be 5.58 million by Sacramento County (Sacramento County 2012).

***Response to comment ST47-255***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST47-256***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST47-257***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

***Response to comment ST47-258***

State Water Project water is released to Lake Piru from Pyramid Lake for use by United Water Conservation District.

**18.3.4.3 Aqueducts and Rivers**

Page 18-29, lines 17-18

Please revise the statement "Approximately 70 miles of bicycle trail extend from Bethany Reservoir with plans to provide similar trails along the entire length of the aqueduct." While this was originally considered, there are no longer any current plans to extend a bicycle trail along the aqueduct past its current end at San Luis SRA.

ST47-259

**18.3.4.4 Wildlife Areas**

Page 18-29, Table 18-13

Some of these wildlife areas are not "Outside of the Delta Watershed" as stated in the title.

ST47-260

**18.4.3.1.1 Impact 18-1a:**

Page 18-33, lines 14-19

There seems lacking any specifics or rationale describing why "less" out-of-Delta water storage (and consequential impacts) is a foregone conclusion. The goal of "increased water supply reliability" in the context of a prospect of increased water use efficiency may lead to more reliable/stable storage under some Plan alternatives.

ST47-261

**18.4.3.2 Delta Ecosystem Restoration**

Page 18-36, lines 21-25

The text declares "no impacts" from certain "Invasive Species Actions." Although details of those actions are not provided, past mussel-containment/prevention actions have had significant impacts on recreational boaters. This may need additional analysis.

ST47-262

**18.4.3.2.3 Impact 18-3b:**

Page 18-38, lines 29-36

This finding of short-term impact ignores the long-term benefits of these ecosystem restoration projects on the environment and on recreation. Similar comments apply to the findings in Sections 18.4.3.1.2; 18.4.3.2.1; 18.4.3.2.2; 18.4.3.4.1; 18.4.3.4.2; and 18.4.3.4.3.

ST47-263

***Response to comment ST47-259***

Please see Master Response 2 regarding the EIR's approach to describing the current environmental setting for the project.

***Response to comment ST47-260***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST47-261***

The comment appears to refer to page 18-33, Lines 1–9. As described on page 2A-5 of the Draft Program EIR, the Delta Plan would encourage increased development of local and regional water supplies to reduce reliance on the Delta. If the Delta exports are reduced through increased water use efficiency, recycled water projects, ocean desalination projects, or local surface water and groundwater projects, it is not anticipated that the new local and regional water supplies would be conveyed to the reservoirs that currently store water from the Central Valley Project or State Water Project because the reservoirs are anticipated to be located upstream of new local and regional water supplies.

***Response to comment ST47-262***

Comment noted. The referenced actions have been fully or partially implemented and focus on monitoring, study, and coordination; the encouragement of the continuation of these actions would not physically change existing conditions and would have no recreational impacts as compared to existing conditions.

***Response to comment ST47-263***

Please see the response to comment ST47-145.

**18.4.3.4.1 Impact 18-1d:**

Page 18-41, lines 32 -44

Most of the listed flood risk reduction projects would reduce flood risk to recreational facilities, which would provide some beneficial impacts in the long term.

ST47-261

**18.4.3.4.1 Impact 18-1d: Impair, Degrade, or Eliminate Recreation Facilities and Activities**

Page 18-42, lines 32-35

This section concludes that there is a potential significant threat to recreation facilities in the Delta associated with flood risk reduction projects. Just the opposite is true. Delta levees protect most recreational activities (including marinas) in the Delta. Additional flood risk reduction projects would likely result in a net positive impact to Delta recreation.

ST47-265

**18.4.3.4.2 Impact 18-2d: Increase the Use of Existing Recreational Facilities Such that Substantial Physical Deterioration of the Facility Would Occur or Be Accelerated**

Page 18-43, lines 11-14

This section concludes that impacts to recreational facilities could be significant associated with flood risk reduction projects while the preceding text would imply just the opposite. Please refer to the comments above on Page 18-42, lines 32-35.

ST47-266

**18.4.3.5 Protection and Enhancement of Delta as an Evolving Place**

Page 18-44, lines 7-8

This section lists three prospective new State Parks – but that there seems no mention in this document of the proposed closure of Brannan Island SRA. This should be added to the analysis provided in this section.

ST47-267

**18.4.3.6.1 Mitigation Measure 18-1**

Page 18-46, lines 4-46

This section describes a number of mitigation measures and states that these measures would reduce impacts to recreation to a less-than-significant level. The conclusion then goes on to state that non-covered actions would continue to pose a significant threat to recreation, because these non-covered actions would then be the

ST47-268

***Response to comment ST47-264***

Please refer to the response to comment ST47-263.

***Response to comment ST47-265***

Please refer to response to comment ST47-263.

***Response to comment ST47-266***

Please refer to response to comment ST47-263.

***Response to comment ST47-267***

The proposed closure of Brannan Island State Park was considered on a temporary basis. The park is now fully open.

***Response to comment ST47-268***

Please refer to response to comment ST47-52.

responsibility and under the jurisdiction of public agencies other than the Council. Whether the project is a covered action or not, the project proponents will still have to conduct a CEQA analysis, and the same permitting process will be required. The local counties in the Delta will likely be protective of important recreational values in the Delta. The value added of the DSC's proposed process surrounding covered actions is not readily apparent.

ST47-268

Page 18-46, lines 20-29

This mitigation measure requires the modification, if feasible, of reservoir operating criteria to provide more water for recreation if Delta exports decline. This measure is too prescriptive, especially when the linkage between water supply reliability projects and reservoir levels may not necessarily be negative.

Specifically, the text states: *"If the volume of water exported from the Delta declines over multiple years, the lead agencies that implement local water supplies probably would not be able to develop a long-term replacement water supply for the surface water reservoirs. However, if feasible, reservoir storage operations criteria must be modified to increase the minimum amount of emergency stand-by storage water that remains in the reservoir to also provide water-based recreation. Also, if feasible, water allocations to water users must be modified to provide more surface water in the reservoirs for recreation and provide other water supplies for non-recreation water users. Access facilities must be modified to accommodate lower water elevations or more frequent fluctuations in water elevations that could occur more frequently in the Proposed Project than under existing conditions."*

By statute, the Davis-Dolwig Act (DDA) makes recreational uses that have been incorporated into State water projects including the SWP subordinate to the project's water supply and power functions meaning that they must give way in cases of conflict between the two and are in that sense defeasible (Water Code Section 11918). Certainly, DWR has a long history of trying to avoid conflicts and seeking to accommodate recreational uses to the greatest degree possible, and DWR, DPR, DBW, and DFG have a very successful history of collaborating to this end implementing the DDA. But it is inaccurate to state, certainly in any categorical fashion, that DWR may look to curtailing SWP water supply to mitigate adverse impacts to the subordinate purpose of SWP recreation and fish and wildlife enhancement that was developed and intended to function under typically broad water surface elevations and other operational considerations required for water supply, power, or flood control purposes at SWP reservoirs.

ST47-269

While CEQA requires that environmental impacts such as those on recreation be mitigated if feasible, the reversal of the express statutory preference of water supply over recreation—i.e., curtailing water supply for the benefit of recreation—makes such a mitigation measure under CEQA "infeasible," as it were. Thus, if there is an unavoidable conflict between water supply and recreation, the appropriate CEQA

## Response to comment ST47-269

In response to this comment, please see text change(s) in Section 5 of this FEIR.

response is to override the impacts on recreation. An identical situation exists between the water supply and flood control functions of the SWP, except that it is water supply that is the subordinate use and which would have to yield to flood control in circumstances of unavoidable conflict.

ST47-269

Looking at the issue another way, the purpose of CEQA was to make decision-makers consider environmental values and impacts that would otherwise not have been considered in the project decision-making process and to require that impacts be mitigated if feasible. It was not to undo or trump the specific expression of legislative intent in cases where the environmental value in question had already been specifically addressed and balanced by the Legislature in the statute authorizing the project.

The Department also respectfully suggests the DDA should be cited up front in both Chapter 18 of this PEIR as it is fundamentally critical to developing and operating recreation at the SWP, but also in the Regulatory Framework Appendix D of this document. Please consider the following:

*While the State Water Project (SWP) is a multi-purpose project approved by the voters in the Burns-Porter Act to include multiple purposes, and thus beneficiaries, including water supply, power, fish and wildlife preservation, flood control, and recreation and fish and wildlife enhancement (RFWE). RFWE at the SWP is a subordinate SWP purpose by statute. While the Davis-Dolwig Act (Water Code Sections 11900-11925) cites an overall objective to maximize the recreational opportunities at the SWP, this objective must be achieved in a manner not to "defeat or impair the orderly operation of any state water project for its other authorized purposes" (Water Code Section 11918) as determined by DWR. Other documents and agreements also clarify and reinforce the subordinate role of RFWE at the SWP including Resources Agency Order No. 6 and the right-of-way agreements conveying to DPR the use of DWR SWP fee right-of-way for the RFWE purpose. These Transfer of Possession and Control agreements typically specify DWR can reclaim any parcels for superior SWP purposes should that need arise in the future. Moreover and by statute, no SWP RFWE costs are allocable to the water and power purpose of the SWP (Water Code Section 11912).*

ST47-270

Page 18-46, lines 30-36

This requires that "Ecosystem restoration areas shall be located away from high-use recreational sites, if feasible." This is not flexible enough, especially since many nature-based recreation activities would be enhanced by ecosystem restoration projects.

ST47-271

**18.4.3.6.2 Mitigation Measure 18-2**

Page 18-47, lines 14-16

ST47-272

### ***Response to comment ST47-270***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### ***Response to comment ST47-271***

Although the Delta Plan development of ecosystem restoration at some recreational locations, such as along Barker Slough, many of the ecosystem restoration programs described for the Delta Plan (see Appendix C of the Draft Program EIR) would be difficult to implement in conjunction with high use active recreation areas or in existing recreation spaces. The new or expanded ecosystem restoration opportunities could preclude existing or future recreational activities, or high-use recreation could preclude establishment of sustainable population of native species in a natural environment. For example, breaching of a levee and inundation of an island may not be compatible with continuation of marinas on that island.

### ***Response to comment ST47-272***

Comment noted.

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Mitigation Measure 18-2, states: "Where impacts to existing facilities are unavoidable, compensate for impacts through mitigation, restoration, or preservation off-site or creation of additional permanent new replacement facilities." Department staff suggests the reopening of existing State Parks that are being closed should be the first measure.

ST47-272

**Sections 18.4.5 to 18.4.8**

Many of the above comments on Section 18.4.3 also apply to these Alternatives.

ST47-273

**Appendix D**

Pages D-153 to D-154, Section 16.2

Consider the addition of a discussion of the Davis-Dolwig Act in this section concerning the State's recreation regulatory framework as described above.

ST47-274

**SECTION 19 TRANSPORTATION, TRAFFIC, AND CIRCULATION**

**19.4.4.6.1 Mitigation Measure 19-1**

Page 19-48, lines 25-28

This section concludes that in case of road closures, traffic impacts would remain significant. The document should note that these types of impacts are typically short term.

ST47-275

**SECTION 20 UTILITIES AND SERVICE SYSTEMS**

Page 20-1, lines 23-29

The text states that it is unlikely that the Proposed Project would influence the need for a new wastewater treatment plant. However, the water quality sections in the Delta Plan and this PEIR actually discuss the potential need for wastewater treatment plant improvements. In fact, pressure to reduce ammonia discharges from the Sacramento Regional Wastewater Treatment Plant has resulted in a Regional Board order that will require a substantial upgrade to that plant. Moreover, this plan would encourage desalination plants that require significant power supplies, and that typically adversely impact the aquatic environment in which their intake/outflow is located. The conclusion in this section of no impacts and less than significant impacts needs to be revised.

ST47-276

**20.4.3.1.1 Impact 20-1: Require or Result in the Construction of New Water Treatment Facilities or the Expansion of Existing Facilities, the Construction or Operation of Which Would Have Significant**

ST47-277

***Response to comment ST47-273***

Please refer to responses on comments ST47-262 through ST47-272.

***Response to comment ST47-274***

Please refer to response to comment ST47-270.

***Response to comment ST47-275***

Comment noted. The measures listed in the EIR sufficiently cover this suggested action.

***Response to comment ST47-276***

As described in Section 2A of the Draft Program EIR, the Delta Plan would encourage the development of new or expanded water and recycled wastewater or stormwater facilities to reduce reliance on the Delta water. These facilities would not themselves cause the need for additional water supply and treatment capacity in addition to the facilities encouraged under the Proposed Project or alternatives to meet additional demands. Impacts associated with the facilities encouraged by the Delta Plan, including waste water treatment and desalination facilities, are described in other chapters of the EIR, including the need for new water treatment facilities. In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST47-277***

Please refer to response to comment ST47-276.

**Environmental Effects or Require the Procurement of Additional Water Supply Entitlements**

Page 20-8 to 20-9, lines 7-46 and 1-19 respectively

ST47-277

The analysis provided in this section is predicated on the statements that no new land development or population growth are encouraged that would increase demand for water and power. Since the Delta Plan does not encourage growth, this section concludes that potential impacts are less than significant. The Delta Plan encourages the expansion of water supply facilities outside of the Delta. It is a fundamental underpinning of the plan to reduce demands on the Delta. The conclusion provided in this section needs additional analysis.

**20.4.3.1.5 Impact 20-5: Require or Result in the Development of New Electricity Generating Facilities or the Expansion of Existing Facilities, the Construction or Operation of Which Would Have significant Environmental Effects**

Page 20-13, lines 1-9

This section concludes that potential impacts on new generating facilities are less than significant. One of the references cited is the City of Huntington Beach and the proposed desalination plant. This plant would require 35 megawatts of power. This is substantial. However, the document goes on to state that since this is less than one percent of the electricity demand for Southern California, it is less than significant. Comparing local electricity demand to the entire Southern California demand is unreasonable. These comparisons need to be made at the local level. Depending on where a desalination plant is sited, a new generation facility may be required. This section needs further analysis.

ST47-278

**SECTION 21 CLIMATE CHANGE AND GREENHOUSE GAS EMISSIONS**

There is no need to include documents in this discussion that were reviewed but did not analyze GHG emissions or potential impacts of climate change on the project as illustrative examples. Consider limiting the discussion to those EIRs or EIS/EIRs that conducted an analysis and remove those that did not.

ST47-279

At the beginning of the Climate Change Section please add a brief discussion about the GHG analysis being addressed as a cumulative impacts analysis. Specific language related to GHG and cumulative analysis is available in the OPR CEQA Guideline Amendments (§15130(f)), the OPR Technical Advisory document (p. 6), the Natural Resources Agency's Final Statement of Reasons (FSOR – p. 17), and the DWR Internal Guidance document.

ST47-280

**21.5.1 Assessment Methods**

ST47-281

***Response to comment ST47-278***

As explained in Master Response 2, the Delta Plan Program EIR is a programmatic document; therefore, project-specific details about future projects that may be encouraged by the Delta Plan are not known with any certainty at this time. Site-specific impacts related to energy use and the power grid for each such project would need to be determined during environmental review of that project and in coordination with the relevant utility providers and regulatory agencies. The conclusion that the City of Huntington Beach desalination facility would have less than significant impacts related to energy demand is based upon information presented in the EIR for the project. That EIR noted that on-site solar generation, use of green building design, and the ability to reduce operations during peak power usage periods by others would be less than significant.

***Response to comment ST47-279***

Comment noted.

***Response to comment ST47-280***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

***Response to comment ST47-281***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Page 21-6, lines 34-36

Please consider adding language, which clarifies that even though the Proposed Project does not result in direct climate change or GHG emissions impacts, an assessment still needs to be conducted and provide rationale. As it currently reads, it's unclear why this section is needed.

#### 21.5.3.1 Reliable Water Supply

Page 21-9, lines 21-22

Water transfers and some types of water use efficiency projects (i.e. drip irrigation) increase energy use and, therefore, have GHG emissions associated with them, which depending on the size of the project might be significant. Consider revising this statement to acknowledge that.

##### 21.5.3.1.1 Impact 21-1a

Page 21-10, lines 28-30

These two sentences appear contradictory: The project's construction emissions would likely exceed draft threshold of significance, but the conclusion was that project's emissions were not significant. Please clarify.

Page 21-12, lines 22-24

Consider using the same language from the mitigation section for consistency. This version limits the technical report to local air district(s) plans, policies, and regulations while the text in the mitigation section is broader.

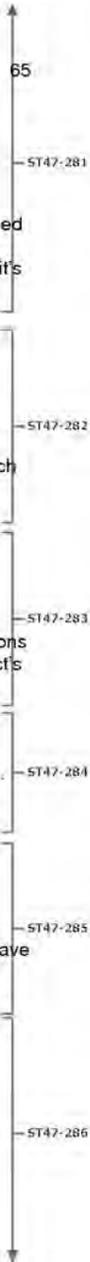
##### 21.5.3.1.2 Impact 21-2a

Page 21-13, lines 30-36

An earlier discussion (page 21-11, lines 18-20) stated that operations would have a significant effect, while this discussion states the findings were far less than significant. Please clarify.

#### 21.5.3.2 Delta Ecosystem Restoration

Page 21-15, lines 14-21



### *Response to comment ST47-282*

Water transfers and water use efficiency and conservation programs are also activities that could be encouraged by the Delta Plan, but GHG emissions generally would not be expected from these activities. In some cases, water transfers and water use efficiency could result in modified surface water projects, as described for surface water projects discussed in Section 21 of the EIR. In addition, please see Section 5 of this FEIR for text changes related to this comment. In response to this comment, please see text change(s) in Section 5 in this FEIR.

### *Response to comment ST47-283*

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### *Response to comment ST47-284*

As described in the response to comment ST47-52, the Delta Stewardship Council cannot direct the construction of specific projects nor would the projects be implemented under the direct authority of the Council, it cannot be assumed that the technical report would have the details suggested in Mitigation Measure 21-1. Therefore, the impacts are described as significant.

### *Response to comment ST47-285*

The analyses of potential GHG impacts under Impact 21-1a are related to the potential for an increase in GHG emissions that may have a significant impact on the environment. The analyses referred to in this comment on page 21-13, Lines 30-36, under Impact 21-2a are related to the potential for a conflict with applicable plans, policies, or regulation adopted for the purpose of reducing emissions of GHGs. Although the Proposed Project could result in project-specific GHG emission impacts that are considered to be significant under Impact 21-2a; the Draft Program EIR analysis determined that overall the actions encouraged by the Proposed Project would be consistent with regional and statewide criteria for GHG emissions.

### *Response to comment ST47-286*

The Delta Conservancy Strategic Plan and California Department of Fish and Wildlife Stage Two Actions for Nonnative Invasive Species programs, identified on page 21-15, Lines 14 through 18, of the Draft Program EIR

are plans that focus on monitoring, study, coordination and encouragement of ecosystem restoration projects that would be similar to those encouraged by the Delta Plan. Implementation of those types of ecosystem restoration projects are analyzed in the EIR. The encouraged variance from the USACE Vegetation Policy would not result in any significant adverse impacts on the existing physical environment.

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The identified programs may be focused on monitoring, study, and coordination, but they will most likely also have recommended actions, related to ecosystem restoration (Delta Conservancy Strategic Plan) or levee modifications (USACE vegetation policy), that may generate significant GHG emissions. Consider revising this statement.

**21.5.3.4.1 Impact 21-d**

Page 21-23, line 45

In addition to the DWR Framework for Investments in Delta Flood Management, the Delta Plan also encourages the CVFPP and other FloodSAFE initiatives that may have the potential to result in GHG emissions impacts, to be included here to show the scope of potential actions.

**21.5.3.6.1 Mitigation Measure 21-1**

Page 21-29, lines 21-22

The text states that; "The following mitigation strategies should be considered by lead agencies, as applicable, to develop 21 specific mitigation measures for future projects." This mitigation measure should include a requirement for Lead Agencies to prepare a section discussing cumulative impacts from climate change and greenhouse gas emissions.

**21.5.3.6.1 Mitigation Measure 21-1**

Page 21-29, lines 36-39

Please note that this list of measures is an excerpt from the full list proposed by the AG's office and CARB and provide this link to the full document: ([http://ag.ca.gov/globalwarming/pdf/GW\\_mitigation\\_measures.pdf](http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf)).

**SECTION 22 CUMULATIVE IMPACT ASSESSMENT**

**22.1 CEQA Requirements**

Page 22-2, lines 1-7

The text states: "[For] these reasons, the analysis in this EIR is inherently cumulative in many regards, in that the Proposed Project consists of the reasonably foreseeable, probable future projects of other agencies that the Delta Plan will regulate or make recommendations about. The focus of this cumulative impact analysis, therefore, is on how existing conditions (including the current effects of past projects) and reasonably foreseeable and probable future projects that the Delta Plan does not

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ST47-286

ST47-287

ST47-288

ST47-289

ST47-290

***Response to comment ST47-287***

The Section 21 of the

***Response to comment ST47-288***

Comment noted. Subsequent projects would undergo CEQA and NEPA analysis including analysis of greenhouse gas emissions as appropriate. The law already requires what the comment requests.

***Response to comment ST47-289***

As noted on page 21-29, Line 36, the proposed measures are a "selected list." The text includes a reference to the document consulted for this EIR.

***Response to comment ST47-290***

Comment noted.

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address ... interrelate with the Delta Plan and the alternatives in a manner that could result in cumulative impacts to which the Delta Plan and the alternatives could make a considerable contribution."

This is a good summary of the nature of a Cumulative Impact Assessment and why this PEIR needs one. Because so many different projects are recommended, or at least mentioned, in the Delta Plan, and the impacts of all of those projects are evaluated in the other chapters or sections of the Delta Plan, it is quite true that "this EIR is inherently cumulative in many regards." The challenge in developing this chapter is to identify and evaluate "foreseeable and probable future projects [affecting water resources in the study area] that the Delta Plan does *not* address."

## 22.2 Cumulative Impacts

Page 22-2, lines 18 & 19

The text states that: "Mitigation measures to reduce significant cumulative impacts are also included." Those measures would only be needed for significant *adverse* cumulative impacts.

### 22.2.1 Water Resources

Page 22-2, line 36

The "Bay Delta Conservation Plan" is among the list of projects that are not "covered projects" or recommended by the draft Delta Plan. The BDCP, after it is approved, is to become part of the Delta Plan. BDCP projects would then be included among those projects that are encouraged by the Delta Plan.

Page 22-3, lines 24 & 25

The text states ~~that~~: "Erosion and sedimentation impacts from the Proposed Action would be less than significant." No evidence is provided to support this conclusion.

Page 22-3, lines 35 & 36

The document states: "However, these impacts are likely to be less than significant because of the likelihood of overall beneficial effects." Beneficial effects or impacts can also be significant impacts. This EIR needs to differentiate between beneficial and adverse impacts and carefully define the thresholds between significant and less than significant impacts.

Pages 22-2 to 22-3, lines 21-46 and 1-39 respectively

## ***Response to comment ST47-291***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

## ***Response to comment ST47-292***

The proposed BDCP is a reasonably foreseeable future project that is being evaluated by the Department of Water Resources as the CEQA lead agency. The cumulative impacts of the proposed Delta Plan, in combination with the impact of the proposed BDCP, are described in EIR Sections 22 and 23. Please see Master Response 1.

## ***Response to comment ST47-293***

Comment noted. As stated in Section 22, Cumulative Impact Assessment in the DEIR, the implementation of "standard construction practices including erosion control best management practices" would ensure that projects under the Delta Plan make a less than cumulatively considerable contribution to cumulative impacts.

## ***Response to comment ST47-294***

Please see the response to comment ST47-145 regarding the Delta Plan's beneficial effects. Regarding the EIR's thresholds of significance, please see Master Response 2.

## ***Response to comment ST47-295***

Regarding the EIR's programmatic approach to the analysis of environmental impacts, including cumulative impacts, please see Master Response 2. Regarding "beneficial impacts" see the response to comment ST47-145.

The discussion of cumulative impacts associated with water resources is discussed in a little over one page in this document. This is an important topic and critical to the Delta Plan. This topic is also much more complicated than described. Upon adoption, this plan has the potential to influence water resources throughout the State, and contrary to the conclusions drawn, cumulative impacts will be significant. Some of the cumulative impacts will be positive and some will be negative. Also, there will be tradeoffs and transfers of impacts from one portion of the State to another.

ST47-295

By design, the Delta Plan should improve water supply reliability, restore ecosystem functions in the Delta, and enhance the Delta as an evolving place. Therefore, there will be cumulative impacts. The goal is that these positive impacts will outweigh the adverse impacts, but there will be tradeoffs. A more detailed and complete analysis is needed in this PEIR for the decision-makers.

Page 22-3, lines 38 & 39

The Department concurs that the Proposed Project, as well as some of the "reasonably foreseeable and probable future projects that the Delta Plan does not address," does indeed have "the potential for beneficial effects" upon water resources. These projects would provide for a larger, more secure, stable, and sustainable water supply for water users in the Delta watershed and the regions that receive Delta water exports. And this improved water supply would contribute to prosperity, help provide jobs, promote economic growth, and lead to population gains and the expansion of developed urban areas.

ST47-296

So, one of the most important aspects of the cumulative impacts of the Proposed Project and the other "probable future [water resource] projects" would be their growth-inducing effect. The induced growth would impact water resources in our study area, as well as increase the demand for municipal and industrial water in the study area. These growth-inducing cumulative impacts should be addressed in this Section.

### 22.2.3 Delta Flood Risk

Page 22-5, lines 4-7

The text states that: "When the impact of actions that the Delta Plan would permit or encourage are considered in connection with the potential impacts of the projects listed in Table 22-1, the combination would result in potentially significant adverse cumulative impacts that are similar to the Proposed Project's impacts on flood management as described in Section 5, Delta Flood Risk." The impacts are declared to be potentially significant, adverse, and similar to those of the Proposed Project. But the magnitude and scale of those additional impacts from projects not recommended by the Delta Plan are not discussed. The text implies that the overall impact would be

ST47-297

## *Response to comment ST47-296*

Growth-inducing impacts of the Delta Plan, including cumulative impacts, are addressed in Section 24, of the EIR.

## *Response to comment ST47-297*

Regarding the EIR's programmatic approach to the analysis of environmental impacts, including cumulative impacts, please see Master Response 2.

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"adverse" to flood risk. The impact would then increase the flood risks faced by the Delta's residents, which has not been adequately addressed.

#### 22.2.4 Land Use and Planning

Page 22-5, lines 37-41

Two impacts are described, each deemed to be less than significant, whose total impact is determined to be "less than cumulatively considerable." The document should describe whether or not the cumulative impact on "land use and planning" would be less than significant. Two less than significant impacts, when added together over time and space, would probably not produce an impact of a magnitude that is truly "considerable." However, two less than significant impacts, added together, could produce a significant impact.

Page 22-6, line 4

The text states that the impact of "dividing an established community ... would be less than significant." Data is not provided to support this conclusion.

Page 22-6, line 12

The text states that: "[these] impacts are likely to be less than significant because [the] impacts are likely to be beneficial." However, beneficial impacts can also be significant.

#### 22.2.5 Agriculture and Forestry Resources

Page 22-6, Line 28 to Page 22-7, line 19

There are no findings or conclusions in the entire section on "Agriculture and Forestry Resources."

#### 22.2.14 Population and Housing

Page 22-14, lines 44 – 46

The text states that "Physical improvements associated with other water supply, ecosystem restoration, water quality, flood risk reduction, and Delta enhancements projects could displace housing and/or people, which would necessitate the construction of replacement housing elsewhere." The word "would" should be changed to "could," for in the midst of the worst local real estate collapse since the Great Depression, there are still so many unoccupied homes for sale and so many unoccupied rental units in the study area, that it is unlikely that much (if any) new housing would be constructed to

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ST47-297

ST47-298

ST47-299

ST47-300

ST47-301

ST47-302

### *Response to comment ST47-298*

Comment noted. As stated in Section 22, Cumulative Impact Assessment in the DEIR, the rerouting of traffic during the construction period would ensure that projects under the Delta Plan make a less than cumulatively considerable contribution to cumulative impacts.

### *Response to comment ST47-299*

This impact conclusion was revised in the Recirculated DEIR at page 22-5.

### *Response to comment ST47-300*

Please refer to the response to comment ST47-145.

### *Response to comment ST47-301*

The findings and conclusions for the cumulative impact assessment under Agricultural and Forestry Resources are presented on page 22-7, Lines 1-2 and Lines 15-16, of the Draft Program EIR.

### *Response to comment ST47-302*

The study period for the Delta Plan Program EIR extends through 2030. Although there have been recent increases in housing vacancies throughout California, the long-term population projections prepared by the State of California Department of Finance anticipate population growth by 2030 which could result in a reduction in housing vacancies as compared to existing conditions.

accommodate the relatively few people who would lose their homes as a result of "Physical improvements associated with other" projects.

Page 22-15, lines 5-8

The Department concurs with the two conclusions but only as they apply to short-term and direct impacts upon population and housing in the study area. It is quite reasonable to expect that short-term, direct "cumulative impacts are expected to be less than significant" and that "the Proposed Project ... would have a less than cumulatively considerable impact." More evidence to support these two conclusions should have been presented. However, the Department does not concur with the above two conclusions as they apply to the long-term and indirect impacts upon population and housing in the study area due to the Proposed Project plus other likely-to-occur projects.

#### 22.2.15 Public Services

Page 22-15, lines 9-31

This subsection on "Public Services" contains conflicts, conjectures, contradictions, and unsupported conclusions. First, the text concludes that the Proposed Project plus other likely-to-occur projects "would result in potentially significant adverse cumulative impacts that are similar to the Proposed Project's impacts on public services ... These cumulative public services impacts would include ...". Some of those impacts are then listed, followed by this qualifier and conclusion: "The projects listed in Table 22-1 do not include new land development and/or population growth, and therefore would not add only negligible new demands to existing public services. For this reason, cumulative impacts are expected to be less than significant. Because the Proposed Project also would include similar projects with no new land development or population growth, it would have a less than cumulatively considerable impact."

Obviously, new land development and population growth are not the intentions of the projects, or would they be the immediate and direct consequences of the Proposed Project or other projects that are not encouraged by the Proposed Project, but which are likely to occur in the study area.

However, as this Public Services subsection is now written, it contains two conflicting conclusions. The first paragraph declares "the combination would result in potentially significant adverse cumulative impacts." Yet the second paragraph concludes "cumulative impacts are expected to be less than significant" and "it would have a less than cumulatively considerable impact." There is not enough data and analysis between these two statements to explain the turnaround.

#### 22.2.16 Recreation

### *Response to comment ST47-303*

The paragraph referred to in this comment on pages 22-14 and 22-15 of the Draft Program EIR describes that the impacts due to cumulative projects (summarized in Table 22-1 of the Draft Program EIR) would result in less than significant impacts to housing because most of the projects would occur in rural or non-urban areas where there are limited numbers of housing to be impacted, and that the displaced residents should be able to find replacement housing due to their limited numbers. The paragraph continues to describe a similar situation related to implementation of the Proposed Project which also would encourage construction of facilities in rural or non-urban areas, and also would impact a minimal number of housing. Therefore, it is anticipated that the displaced residents would be able to find replacement housing.

### *Response to comment ST47-304*

As described in Section 22.2.15, "When the impact of actions that the Delta Plan would permit or encourage are considered in connection with the potential impacts of the projects listed in Table 22-1, the combination would result in potentially significant adverse cumulative impacts..."

However, this discussion further states and concludes that: "The need for new or physically altered public service facilities, however, is mostly prompted by increased demand, typically as a result of new land development and/or population growth. The projects listed in Table 22-1 do not include new land development and/or population growth, and therefore would not add only negligible new demands to existing public services. For this reason, cumulative impacts are expected to be less than significant. "The full analysis of the project's potential impact on Public Services is described in Section 15 of the DEIR.

### *Response to comment ST47-305*

Comment noted.

Page 22-15, line 40

Some of the "physical improvements" associated with the listed projects (such as ecosystem restoration) could potentially enhance recreational facilities and activities in the Delta.

ST47-305

**22.2.18 Utilities and Service Systems**

Page 22-18, line 39 to Page 22-19, Line 25

This subsection, concerning potential cumulative impacts on "Utilities and Service Systems," is similar to the subsection on Population and Housing as discussed above.

ST47-306

**22.2.19 Climate Change and GHG Emissions**

Page 22-20, lines 5-7

The document states that "there is some potential for beneficial impacts [on "Climate Change and Greenhouse Gas Emissions"] during [project] operations, such as the generation of hydroelectric power and carbon sequestration (e.g., from habitat restoration)." Although the Department concurs, more data and analysis are needed on this important topic.

ST47-307

Page 22-20, line 14

The document states that: "cumulative impacts are expected to be less than significant." The text should acknowledge that those impacts could be positive, even if they are not significant.

ST47-308

Page 22-20, line 27

The text states that: "These impacts could be significant." The text should make clear that in this case, the reference is to global climate change's possible impacts upon the Proposed Project and some of the Other Projects.

ST47-309

**22.3 Cumulative Impacts of No Project Alternative**

Page 22-20, lines 34-42

This important subsection is only one paragraph, and it does not present any evidence or reach any conclusions about significance. This topic clearly needs additional discussion. However, the subsection does end with an important and reasonable statement, which deserves elaboration in this subsection and in many other

ST47-310

***Response to comment ST47-306***

Please refer to the response to comments ST47-145.

***Response to comment ST47-307***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

***Response to comment ST47-308***

Please refer to response to comment ST47-145.

***Response to comment ST47-309***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

***Response to comment ST47-310***

The sentence referred to in this comment indicates that the future conditions under the No Project Alternative would be degraded as compared to future conditions under the Proposed Project.

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places throughout the PEIR: "...existing conditions would continue to degrade due to lack of encouragement of projects and programs that would be encouraged under the Delta Plan." In other words, the status quo concerning the California Delta is not sustainable under business-as-usual practices.

ST47-310

#### 22.4 Cumulative Impacts of Alternative 1A

Page 22-21, lines 1-18

Again, this important subsection, is also too short. It is only one paragraph, and it does not present any evidence or reach any conclusions about significance. It does declare in its last sentence that, "For impacts that are less than cumulatively considerable (as described above for the Proposed Project), the reduced number of projects under Alternative 1A indicate that Alternative 1A also would have less than cumulatively considerable impacts."

ST47-311

The entire analysis of the cumulative impacts of all of the alternatives is inadequate. There is just one paragraph of text for the analysis of the cumulative impacts for each of the following alternatives: the No Project Alternative, Alternative 1A, Alternative 1B, Alternative 2, and Alternative 3.

ST47-312

#### 22.6 Cumulative Impacts of Alternative 2

Page 22-22, lines 4-7

The document fails to identify the significance of any particular impacts. In lines 4-7, it tries to make two important points but leaves out some important words. Suggested editorial changes (in brackets) are as follows: "Thus, existing flood risk [would continue to increase with climate change and continued Delta land subsidence] and water supply reliability conditions would continue to degrade. Alternative 2 would also make a greater contribution to [the] cumulative conversion of agricultural land by converting the use of [much of the old] Tulare Lake [bed] to water storage."

ST47-313

#### 22.7 Cumulative Impacts of Alternative 3

Page 22, lines 11-26

Again, this section does not reach any real conclusions about the levels of significance of any specific impacts. It also contains a questionable statement on Lines 21 and 22: "Alternative 3 also would make greater contributions to cumulative impacts on flood risk because it involves fewer new levees." Fewer new levees than the Proposed Project should mean *less* of a reduction in flood risk. So, under Alternative 3, the contribution to the positive impacts on flood risk (that is, a reduction in flood risk) would be *less* than with the Proposed Project. Yet the text concludes that Alternative 3 would "make greater contributions to cumulative impacts on flood risk."

ST47-314

### *Response to comment ST47-311*

Comment noted. Please see Master Response 3.

### *Response to comment ST47-312*

Please see Master Response 3.

### *Response to comment ST47-313*

Comment noted.

### *Response to comment ST47-314*

The analysis in Section 5, Delta Flood Risk, of the Draft Program EIR considers the risks associated with construction and operation of new facilities (including levee modifications to accommodate reliable water supply, ecosystem restoration facilities, water quality improvement, and flood risk reduction projects) on adjacent land uses and levees that may not be able to withstand the hydrologic changes caused by new facilities within the waterways. Therefore, a reduction in new levees and ecosystem restoration projects within the Delta could result in less risk to existing levees, as described in Section 5 of the Draft Program EIR. However, it is recognized in the Draft Program EIR, that fewer levee improvement projects would increase the risk to existing land uses from flooding.

Page 22, line 27

The References subsection for Section 22 contains only *one* reference. That is not nearly enough to support the conclusions made in this Section. Also, Table 22-1, which completes this Section, runs for 22 pages and contains detailed and specific information about dozens of Other Projects. The sources of that information should be provided.

ST47-315

**Table 22-1 Related Actions, Programs and Projects Considered in the Cumulative Impact Assessment**

Overall, the table identifies many "Actions, Programs, and Projects" that are sponsored by, or involve the active participation of, more than one government agency. However, for some of these multi-agency Actions, Programs, and Projects, Table 22-1 lists only one agency in the "Agency" column. Consider changing the column heading to "Lead Agency."

ST47-316

Specific comments on Table 22-1, by page:

Page 22-23

The second box lists two programs, "Surface Water Storage Investigation" and "Shasta Lake Water Resources Investigation" but provides a description of only one of them.

ST47-317

Page 22-24

Near the bottom of the page the phrase "reduce other ecological stressors" should be changed to "reduce ecological stressors." The phrase "modify SWP and CVP Delta water conveyance facilities" should be changed to "modify and/or augment SWP and CVP Delta water conveyance facilities." It is quite possible that the BDCP will not simply call for the modification of existing "SWP and CVP Delta water conveyance facilities" but could also call for the construction of entirely new Delta water conveyance facilities that would connect to existing facilities.

ST47-318

Page 22-26

The description of the "2-Gates Project" should be updated.

ST47-319

Page 22-30

The description of the "San Joaquin River Restoration Program" should be updated.

ST47-320

### ***Response to comment ST47-315***

The analysis in Section 22 of the Draft Program EIR relies upon results of the analyses in Sections 3 through 21 of the Draft Program EIR. Therefore, the references included Sections 3 through 21 are incorporated by reference into Section 22.

### ***Response to comment ST47-316***

The agencies listed in the first column of Table 22-1 are generally agencies that are responsible for implementation of the projects, but may not be the "Lead Agency" consistent with the CEQA definition of a "Lead Agency."

### ***Response to comment ST47-317***

The referenced item discusses a single project, the Shasta Lake Water Resources Investigation, which is a surface water storage investigation.

### ***Response to comment ST47-318***

Please see Master Response 1.

### ***Response to comment ST47-319***

The information is consistent with the current project description provided on the Bureau of Reclamation's Mid-Pacific Region website.

### ***Response to comment ST47-320***

The information is consistent with the current project description provided on Reclamation's Mid-Pacific Region website.

Page 22-35, bottom

How have the goals of the "San Joaquin County Multi-Species Habitat Conservation and Open Space Plan" been met since the Plan was completed in 2000? The Plan is described as an "ongoing program."

ST47-321

Page 22-43

The flood risk reduction section of this table needs to include the Delta Long-Term Management Strategy Program, the Delta Levees Program (DWR), and the Delta Flood Emergency Preparedness, Response and Recovery Program (DWR.)

ST47-322

Page 22-39, Table 22-1, Related Actions, Programs, and Projects Considered

At the bottom of the table under Flood Risk Reduction, a discussion of the San Francisco Bay Long-Term Management Strategy (LTMS) for dredging is discussed. However, the Delta LTMS program is not mentioned. This is a significant oversight.

ST47-323

## SECTION 23 BAY DELTA CONSERVATION PLAN

### 23.6.16 Recreation

Page 23-35, line 8

Some of the "physical improvements" associated with the listed projects (such as ecosystem restoration) could potentially enhance recreational facilities and activities.

ST47-324

## SECTION 24 OTHER CEQA CONSIDERATIONS

### 24.1.2.4 Flood Risk Reduction

Page 24-5, lines 22-26

This section concludes that the Proposed Project will not likely result in growth-inducing impacts. As levees are improved to the PL84-99 standard and above, there may be local pressure to build homes behind these levees. This is a dangerous potential for public health and safety, especially on the more deeply subsided Delta islands. Existing laws preventing development in the Primary Zone of the Delta may need additional assurances to protect against development pressures.

ST47-325

### 24.3 Significant and Unavoidable Impacts of the Proposed Project and Alternatives

Page 24-17, Table 24-1 Summary of Significant and Unavoidable Impacts

ST47-326

## *Response to comment ST47-321*

The plan was completed in 2000. The program is ongoing and continues to address issues associated with land conversion of multi-purpose open space, agricultural, and natural lands; development of preserves; monitoring of lands; and funding for these activities.

## *Response to comment ST47-322*

The Delta Long-Term Management Strategy Program, the Delta Levees Program, and Delta Flood Emergency Preparedness, Response and Recovery Program are encouraged under the Delta Plan. These projects are considered in the cumulative impact assessment, but not included in Table 22-1 which describes projects that are considered only as cumulative impact projects.

## *Response to comment ST47-323*

Please refer to response to comment ST47-322.

## *Response to comment ST47-324*

Please see the response to comment ST47-145.

## *Response to comment ST47-325*

Regarding the possibility of levee improvements inducing growth, please see the response to comment ST47-239.

## *Response to comment ST47-326*

As described in Section 5, construction of reliable water supply projects (including intakes), establishment of Delta ecosystem restoration projects, water quality improvement projects (including outfalls), Delta enhancement projects (including visitor centers, gateways, and new parks), and flood risk reduction projects (including relocation or removal of levees) could change drainage patterns, create or contribute to runoff, expose other structures to flood risk, or place structures in the 100-year Flood Hazard Area. As described in Subsection 2.3 of Section 2B, agencies undertaking covered actions must incorporate mitigation measures in the Final EIR into their projects or plans in order for any such covered action to be consistent with the Delta Plan. For non-covered actions, the Delta Stewardship Council lacks authority to require that other agencies to adopt any particular mitigation. The majority of other agency actions/projects that the Draft Program EIR evaluates, and associated

mitigation measures, will be non-covered actions. For these reasons, the Draft Program EIR determines, as CEQA requires, that each significant environmental impact is significant and unavoidable as CEQA specifies.

Under No. 5, Delta Flood Risk, four significant and unavoidable impacts are listed. Brief descriptions of these are:

- 5-1 – Substantially alter existing drainage patterns,
- 5-2 – Create or contribute runoff,
- 5-4 – Expose people or structures to significant risk, and
- 5-5 – Place structures in a 100-year Flood Hazard Area

ST47-326

The Department disagrees. Flood risk reduction measures in the Delta will actually have net positive benefits on these four subject areas. Drainage patterns and runoff will not be exacerbated due to proposed risk reduction measures, and exposure of risk to people and structures will be reduced by the actions encouraged by the Proposed Project and most of the alternatives. Please refer to comments on each specific subject area for more detailed discussion.

#### SECTION 25 COMPARISON OF ALTERNATIVES

The entire comparison of alternatives is discussed in fewer than 11 pages. This section of the EIR is critical for the decision makers to understand the impacts of the Proposed Project and the alternatives. It is important that this EIR provide substantially more discussion and analysis of the alternatives since adoption of the Delta Plan will have far reaching consequences on a state-wide basis.

ST47-327

#### 25.4 Comparative Analysis of Alternatives

Page 25-2, lines 12-14

The document states that: "Fundamentally, the Delta Plan seeks to arrest (and ultimately improve) declining water reliability and declining environmental conditions related to the Delta ecosystem, flood risk, and water quality, as well to improve recreation opportunities in the Delta and protect Delta legacy towns." First, the term "water reliability" should be changed to "water supply reliability."

ST47-328

Page 25-2, line 15

The text implies that inaction on the part of government has led to: "... increasing long-term environmental impacts due to inaction." Inaction on the part of local, State and federal governments, plus Delta stakeholders, is not the only cause of "increasing long-term environmental impacts." It is inaction plus many stressors including global climate change, land subsidence, and continued seismic risk that threatens major negative long-term environmental impacts in the Delta, the Delta watershed, and areas that receive water exported from the Delta.

ST47-329

### *Response to comment ST47-327*

As described on page 25-1, lines 3 and 4, this section only provides a summary of the results of the impact assessment. The more detailed discussions of the impact assessment of the alternatives as compared to conditions that would occur with implementation of the Proposed Project are presented in Sections 3 through 21 of the Draft Program EIR. For further explanation of the EIR's approach to the analysis of alternatives, please see Master Response 3.

### *Response to comment ST47-328*

Comment noted.

### *Response to comment ST47-329*

Comment noted.

Page 25-2, lines 28-36

This paragraph mentions some important differences between the Proposed Project and the five Alternative Projects. However, it should mention two other significant differences between the Proposed Project and some of the Alternative Projects: differing emphasis on water conservation programs and on water transfers.

ST47-330

#### 25.4.1 Water Resources

Page 25-2, lines 39 & 40

Regarding the statement that: "The Delta Plan encourages decreased reliance on imported Delta water ..." Does it also require decreased reliance on water diverted from river systems which flow into the Delta? If it does, that should be mentioned here as well.

ST47-331

Page 25-2, line 41

The text states that: "local water supplies, such as groundwater, are over utilized and not sustainably managed in some areas ..." Some local water supplies, such as runoff from local storms, are *underutilized* in some parts of the study area. Groundwater is the only type of local water supply that is frequently over-utilized in California.

ST47-332

Pages 25-2 to 25-3, lines 43 to 1, respectively

The document states that: "The imbalance in water supplies and demands in the state are predicted to be exacerbated with changing climate patterns over the next few decades." The word "in" should be changed to "between." Most climate scientists agree that global climate change will affect California's weather patterns for more than "the next few decades." Negative impacts on California's water resources due to global climate change are expected to slowly increase throughout this century and not suddenly cease or stabilize after only a few decades. Some scientists predict these negative impacts from global climate change will increase at an accelerated rate.

ST47-333

Page 25-3, lines 1-3

The text states: "The water quality in the Delta and the Delta watershed is mostly affected by issues related to high salinity and the occurrence of selenium and methylmercury ..." The text should also mention the effects on Delta water quality due to pollution from urban and agricultural runoff and discharges from wastewater treatment plants. As stated previously, this PEIR needs to differentiate between water quality as it relates to the ecosystem and as it relates to drinking water.

ST47-334

### *Response to comment ST47-330*

Comment noted.

### *Response to comment ST47-331*

Please see Master Response 5.

### *Response to comment ST47-332*

Comment noted. This point is consistent with the discussion on page 25-2, Lines 41 through 43, of the Draft Program EIR.

### *Response to comment ST47-333*

Comment noted.

### *Response to comment ST47-334*

Comment noted.

Page 25-3, lines 6 & 7

The text states that: "Making up the difference with groundwater, desalination and recycling projects, and efficiency/conservation measures may be difficult." It would be helpful to add "increased water transfers" to this list of alternatives. Also "water" should be placed before "recycling."

ST47-335

Page 25-3, lines 19 & 20

The text states that: "Overall, Alternative 3's water quality impacts would be greater than the Proposed Project." Would those impacts be positive or negative?

ST47-336

Page 25-3, line 21

If Alternative 2 "includes substantial water quality improvement projects," it may have a greater long-term positive impact on water quality than even the Proposed Project.

ST47-337

Page 25-3, lines 22-25

This section concludes: "It should be noted that the impacts of the Project and Alternatives 1A and 1B are chiefly construction-related and therefore temporary and limited. These alternatives would ultimately provide benefits to water quality, because they would include facilities to prevent further declines in water quality." These important points should be repeated in some of the other Sections of this PEIR. Also, the words "and programs" should be placed after "facilities."

ST47-338

#### 25.4.3 Delta Flood Risk

Page 25-4, lines 2-9

The comparative analysis for Delta flood risk is handled in seven lines. This is a much more complicated subject than described in this brief text and deserves substantially more analysis to make a reasonable comparative statement. Also, the first sentence states that the Delta is a vast network of levees and canals that protect and dewater reclaimed land from flooding.

ST47-339

#### 25.4.14 Population and Housing

Page 25-8, lines 20-26

The Population and Housing subsection starts with a list of "types of activities [which] could affect population and housing" in the Study Area due to the Proposed and

ST47-340

### *Response to comment ST47-335*

As described in Section 2A and Appendix C of the Draft Program EIR, Alternative 2 would restrict the use of water transfers across the Delta as compared to Existing Conditions, Proposed Project, and Alternatives 1A, 1B, and 3. The word "recycling" is defined in the Draft Program EIR to include both wastewater (or frequently referred to as "water") recycling and stormwater recycling.

### *Response to comment ST47-336*

Please see the response to comment ST47-145, the EIR only evaluated potential adverse impacts, as described subsection 1.4, Overview of the Delta Plan Environmental Impact Report, of the Draft Program EIR.

### *Response to comment ST47-337*

As described in Section 3, Water Resources, of the Draft Program EIR, the water quality impacts were evaluated as the potential for an action to violate any water quality standards or waste discharge requirements, or otherwise substantially degrade water quality. Because there would be less ecosystem restoration in the Delta under Alternative 3 than under the Proposed Project, there would be a greater potential for continued agricultural runoff into the Delta waters which could result in a greater adverse water quality impacts. Implementation of water quality improvement projects would be similar under Alternative 3 and the Proposed Project, as described in Appendix C of the Draft Program EIR.

### *Response to comment ST47-338*

Comment noted.

### *Response to comment ST47-339*

This section provides a summary of the results of the impact assessment presented in Section 5, Delta Flood Risk. The more detailed discussions of the impact assessment of the alternatives as compared to Proposed Project are presented in Section 5 of the Draft Program EIR.

### *Response to comment ST47-340*

Regarding the Delta Plan's beneficial impacts, please see the response to comment ST47-145.

Alternative Projects. However, some important long-term impacts are not on this list. The adoption and completion of both the Proposed Project and some of the Alternative Projects would result in a larger, more reliable and secure water supply for the Study Area, increased flood protection for the Delta, and significant environmental gains for California.

ST47-340

Page 25-8, lines 34-36

The document states that: "Projects could also displace some existing housing and people, depending on the size and location of facilities, necessitating the construction of replacement housing elsewhere": In the midst of the local real estate collapse, there are still so many unoccupied homes for sale and so many unoccupied rental units in the Study Area, that it is unlikely that much (if any) new housing would be constructed to accommodate the relatively few people who would lose their homes as a result of the Proposed Project or most of the Alternative Projects.

ST47-341

Page 25-8, lines 40-42

This section concludes that: "Similar types of population and housing impacts would occur under Alternatives 1B, 2, and 3 because these alternatives have more of some of the facilities/actions and fewer of others that could have population/housing impacts than the Proposed Project." The construction of a huge reservoir (in terms of its surface area) on parts of the old Tulare Lake bed under Alternative 2 could have a significant negative impact on population and housing in that region. The loss of Delta-exported water for irrigation of drainage-impaired lands on the west-side of the San Joaquin Valley under Alternative 2 could also have a significant negative impact on population and housing in parts of the west-side of the San Joaquin Valley. Therefore, the "population and housing impacts" under Alternative 2 would not really be similar to those under the other alternatives.

ST47-342

#### 25.4.15 Public Services

Page 25-9, lines 4-6

The text states that: "The Proposed Project, No Project Alternative, and Alternatives 1A, 1B, 2, and 3 do not include new land development and/or population growth, and therefore would not add new demands to existing police, fire protection, and emergency medical services."

ST47-343

#### 25.4.18 Utilities and Service Systems

Page 25-9, lines 38-44

ST47-344

### *Response to comment ST47-341*

Please refer to response to comment ST47-302.

### *Response to comment ST47-342*

The proposed reservoir in the Tulare Lake Bed is located within an area used for flood flows during extremely wet years and does not include residential development. Reduction in Delta exports to the San Joaquin Valley would not increase population and housing demand and may not necessarily result in reduction in population if irrigation water supplies were made available from other water supplies by water transfers and increased water use efficiency, as described in Section 3, Water Resources, of the Draft Program EIR. Therefore, Alternative 2 would not result in an increase in population and housing demand or displace population or housing as compared to the Revised Project.

### *Response to comment ST47-343*

Comment noted.

### *Response to comment ST47-344*

Please see the response to comment ST47-276.

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ST47-344

Actions that are encouraged under the Delta Plan have already resulted in a demand for additional wastewater treatment facilities in the Delta, and desalination plants would likely require a significant source of energy.

Page 25-9, lines 38 & 39

The text states in part that: "Demand for municipal utilities—water, wastewater, and stormwater systems—and for solid waste disposal capacity ..." would be impacted. Demand for other types of public utilities, such as electricity and natural gas, would also be impacted by the Proposed and Alternative Projects. This PEIR needs to evaluate this in this Section.

ST47-345

#### 25.4.19 Climate Change and Greenhouse Gas Emissions

Page 25-10, lines 23-25

The GHG emissions impacts of two unique features of Alternative 2 – the construction of a huge reservoir on the old Tulare Lake bed and the loss of Delta-exported water for irrigation of drainage-impaired lands on the west-side of the San Joaquin Valley – should be explored in this subsection.

ST47-346

#### 25.5 Environmentally Superior Alternative

Page 25-10, lines 28 & 29

There is not a Section or subsection in which it was demonstrated that either the Proposed Project or any of the five Alternative Projects would or would not accomplish the "specific goals and objectives that the Delta Plan must accomplish." Such a Section or subsection belongs somewhere in this draft PEIR.

ST47-347

Page 25-10, lines 36-38

The document states that: "The biggest differentiators among the Proposed Project and alternatives, given their varying focus and the subject matter requirements of the Delta Reform Act, relate to long-term impacts to biological resources, flood risk reduction, water supply and water quality, and agricultural land." There would also be a significant difference in "long-term impacts" to "population and housing" in the Study Area between the Proposed Project and the No Project Alternative, as well as between the Proposed Project and Alternative 2.

ST47-348

Page 25-11, lines 6 & 7

ST47-349

### *Response to comment ST47-345*

Sections 20 and 24 of the EIR consider impacts related to the natural gas and electricity demands of projects encouraged by the Delta Plan and the alternatives.

### *Response to comment ST47-346*

As described in Section 2A and Appendix C of the Draft Program EIR, construction of the reservoir storage on the Tulare Lake bed would require minimal construction due to the presence of existing levees around this area, which is already used for flood storage in extremely wet years. As described in Section 2A, reduction of Delta exports under Alternative 2 may not result in a reduction in irrigated acreage if water demands are met through increased water use efficiency and water transfers within the San Joaquin Valley basin. These projects would not create new sources of greenhouse gas emissions.

### *Response to comment ST47-347*

Please see Master Response 3.

### *Response to comment ST47-348*

As the Draft Program EIR explains at page 16-28, the No Project Alternative would have fewer impacts in population and housing than the Delta Plan as proposed. Both, however, would have impacts relatively small in magnitude (though potentially significant). The EIR thus fairly determines that this impact is not among the key differences between the No Project Alternative and the Revised Project. Regarding Alternative 2's impacts related to population and housing, please refer to response to comment ST47-342.

### *Response to comment ST47-349*

Regarding the determination of the Environmentally Superior Alternative, please see Master Response 3. Regarding the EIR's approach to the BDCP, which is not a part of the Delta Plan, please see Master Response 1.

The text states that: "Among the remaining alternatives, the Proposed Project is the environmentally superior alternative, taking into account both construction and operations impacts." First, taken in context with the preceding paragraph of text, this statement implies that the No Project Alternative is the overall "environmentally superior alternative." This *might* be true in the short-term, but it may not be true in the medium-term or long-term, mainly because the status quo concerning the Study Area's natural environment and water resources is not sustainable under current practices (without BDCP). This, however, needs to be analyzed in the context of a successful BDCP which is not included in this analysis.

ST47-349

The "environmentally superior" alternative may be irrelevant if the environmentally superior alternative is not a feasible alternative. There should be a major Section or subsection in this PEIR where this crucial question is answered for the Proposed Project and each of the five Alternatives: Does this alternative meet the "specific goals and objectives that the Delta Plan must accomplish"?

ST47-350

Page 25-11, lines 17-20

It is stated that: "Alternative 2 would result in ... 380,000 acres to be fallowed within the San Luis Drainage Area ...". This is not accurate. Alternative 2 would result in 380,000 acres of farmland in the San Luis Drainage Area being retired from irrigated production. That land would *not* be fallowed.

ST47-351

Page 25-11, line 22

The phrase "Extensive land fallowing" should be replaced by "Extensive farmland fallowing and retirement". Then a sentence similar to this one should be placed right after the sentence that ends in "dust": "The periodic fallowing or permanent retirement of farmland from irrigated production in the San Joaquin Valley would also have slight negative impacts on the balance of greenhouse gases in the atmosphere."

ST47-352

Page 25-11, line 42

This important Section, the last real section or chapter in this 2500 plus page PEIR, deserves a conclusion. Instead, the text just ends, and the reader is left without a clear conclusion. Also, there is no reference subsection at the end of this Section. There should be at least one reference in Section 25, for CWC Sec. 85054, which should be placed somewhere near the start of this Section.

ST47-353

### ***Response to comment ST47-350***

Please refer to Master Response 3.

### ***Response to comment ST47-351***

As discussed in Section 25 of the Recirculated Draft Program EIR, Alternative 2 would result in the greatest reduction in agricultural land use in the San Joaquin Valley through the loss of approximately 320,000 acres of Farmland of Statewide Importance (if Alternative 2's Tulare Lake Basin reservoir is constructed), and possibly additional acreage to be periodically fallowed due to restrictions on total amount of water to be exported from the Delta.

### ***Response to comment ST47-352***

As described in Section 2A, reduction of Delta exports under Alternative 2 may not result in a long-term reduction in irrigated acreage if water demands are met through increased water use efficiency and water transfers within the San Joaquin Valley basin. However, there may be periods of time when additional water supplies are not available. Therefore, the term "fallow" is appropriate in the sentence referred to in this comment on page 25-11, Line 22, of the Draft Program EIR.

### ***Response to comment ST47-353***

As described on page 25-1, Lines 3 and 4, this section provides a summary of the results of the impact assessment. The more detailed discussions of the impact assessment of the alternatives and the related references are presented in Sections 3 through 21 of the Draft Program EIR. California Water Code section 85054 is discussed in Section 1, Introduction, of the Draft Program EIR. The summary of the Draft Program EIR analyses are described in the Executive Summary.

# ST48 Sierra Nevada Conservancy



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Sent via E-mail: [deltaplancomment@deltacouncil.ca.gov](mailto:deltaplancomment@deltacouncil.ca.gov)

February 2, 2012

Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

Dear Chairman Isenberg and Members of the Council:

## Re: Comments on Delta Plan DEIR

Thank you for the opportunity to provide input on the Draft Environmental Impact Report (DEIR) for the Delta Plan. Our comments revolve around potential impacts of policies in the preferred alternative that affect the Delta Watershed, or so-called second planning area.

There are numerous references to the Delta Watershed being an important source for water reliability and Delta ecosystem restoration, the co-equal goals which are the primary and fundamental purpose of the DEIR. While the Draft Plan proposes policies that could significantly impact the Delta Watershed, these policies are not analyzed for their effects on the upper watershed – effects such as habitat loss, loss of upper watershed ecosystem restoration, impacts on future growth in communities (land use and planning), scenic vistas, cultural/archaeological resources, and loss of recreational opportunities.

ST48-1

As an example, the DEIR includes a policy for developing and enforcing new flow requirements for the Delta and high priority tributaries (ER P1). References to this particular policy are made throughout the DEIR under the discussions of impacts to reliable water supply (page 2A-5: line 39), delta ecosystem restoration (page 2A-24: line 33; page 2A-26: line 20 Overview; and page 2A-38 and 39: Sections 2.2.2.4 and 2.2.2.4 .1 Modification of Flow Objectives and Flow Criteria in the Delta and Delta Watershed), and water resources (Sections 3.4.3.2 and 3.4.3.2.3 Impact 3-3b).

A report by the California Water Boards related to flow requirements (*Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem: Prepared Pursuant to the Sacramento-San Joaquin Delta Reform Act of 2009*, August 3, 2010) suggests that 75% of unimpaired Sacramento River inflow is needed from November through June to support native Delta fish. Historically the average inflow from the Sacramento River is approximately 50%, according to the report. Finding an additional 25% for the Delta to meet this single objective would be difficult under the best of circumstances. In a year like this one, where Sierra snowpack sits at just 37% of normal, it could

ST48-2

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## Response to comment ST48-1

Please refer to Master Response 5.

## Response to comment ST48-2

This is a comment on the Project, not on the EIR. Social and economic impacts are not effects on the environment under CEQA, and are not analyzed in the EIR (CEQA Guidelines §§ 15064(e) and 15131).

be impossible. While the numbers are arguable, given they are just averages, they illustrate a key point: the Delta Plan can't require downstream actions that are unexamined and potentially unsupportable by the upstream water source.

Another area that has the potential for significant impact on the Delta Watershed is the proposed project recommendations relating to Section 2.2.1.2 Surface Water Projects, which encourages the development of local water supplies for reduced reliance on the Delta. The Delta Watershed is currently home to many water storage and diversion facilities that already serve communities, cities and metropolitan areas within and outside the Delta Watershed region. The emphasis on local supply development will naturally focus attention to the upper watershed, the source of most of the State's water. Yet potential impacts to ecosystem health and water supply in the upper watershed are missing from the DEIR.

And finally, the SNC believes that success in reaching the coequal goals through financing strategies found in the recommendations for financing framework (Section 2.2.6) would be greatly strengthened if considerations were included for financing strategies within the Delta Watershed. Our staff is available to work with the Delta Stewardship Council to assist with the development of appropriate strategies.

As we mentioned in our September 30 comments on the 5<sup>th</sup> Staff Draft plan, there is a clear link between: a.) water supply and ecosystem management in the legal Delta, and b.) impacts on public trust values in the larger Delta Watershed. Both areas have water quality, supply, ecosystem and community sustainability mandates that need to be addressed – and both count on the same water to meet their respective needs. As a result, we believe the DEIR must look more comprehensively at goals and recommended actions for the Delta to better assess and address their potential impacts to water supply and ecosystem needs in the upper watershed.

If you or your staff has any questions regarding the SNC's comments, please contact me at (530) 823-4667 or Kerri Timmer, Program Manager, at (530) 823-4683.

Sincerely,

  
JIM BRANHAM  
Executive Officer

cc: Kerri Timmer, SNC Program Manager



### Response to comment ST48-3

Potential impacts associated with development of regional water storage facilities, such as Sites Reservoir, are described under potential impacts from reliable water supplies in the Draft Program EIR. Also, please refer to Master Response 5.

### Response to comment ST48-4

This is a comment on the Project, not on the EIR. Social and economic impacts are not effects on the environment under CEQA, and are not analyzed in the EIR. CEQA Guidelines §§ 15064(e) and 15131.

### Response to comment ST48-5

Please refer to Master Response 1.

# ST49 SWRCB



State Water Resources Control Board

February 2, 2012

Ms. Terry Macaulay  
Deputy Executive Officer  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

Dear Ms. Macaulay:

## COMMENTS ON THE DRAFT DELTA PLAN PROGRAM ENVIRONMENTAL IMPACT REPORT

State Water Resources Control Board (State Water Board), Central Valley Regional Water Quality Control Board (Central Valley Water Board), and San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Water Board) (collectively Water Boards) staff has reviewed the draft Delta Plan (Plan) Environmental Impact Report (DEIR). Our comments and suggestions are presented as follows:

- General Comments
- Impacts Analysis and Mitigation Measures
- Regulatory Framework

In addition, staff has comments on the Fifth Draft Delta Plan that are summarized following the DEIR comments.

### General Comments

1. Water Board staff supports the improved integration of monitoring, reporting, and assessment efforts called for in WQ R7. In addition, staff supports the encouragement of project proponents to consult with the Water Boards early in the development of their actions, as proposed in WQ R10. Staff also supports the inclusion of Suisun Marsh in ER R1 as a high priority area for ecosystem restoration.

*Response to comment ST49-1*

Comment is noted.

*Response to comment ST49-2*

Comment noted.

ST49-1

ST49-2

- 2. A brief reference to Clean Water Act 303(d) listed water bodies is made in Section 1.1.2 and Table D-2 of Appendix D (Regulatory Framework), and a more detailed discussion regarding some constituents and parameters is provided under Section 3.3.3.2 (Water Resources).

Please use the 2010 Clean Water Act 303(d) list for impaired water bodies, which can be located at:

[http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/integrated2010.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml).

ST49-3

The Final EIR should provide a comprehensive list of all water bodies located within and downstream of, the project area, which are included on the 2010 Clean Water Act 303(d) list for impaired water bodies, and the constituent(s) or parameter(s) each water body or water body segment is listed for, and Total Maximum Daily Loads (TMDL), should they be under development, developed and approved, or forecasted for development.

- 3. A brief reference to National Pollution Discharge Elimination System (NPDES) permits is made in Section 1.1.2 of Appendix D (Regulatory Framework), and again under Sections 3.3.4.2.2 and 3.4.4.6.1, and Mitigation Measure 3-1(Water Resources). It would be helpful to clarify throughout the Final EIR which specific NPDES permit is being discussed, and to provide the correct citation/reference. In addition, please see our comment in the Regulatory Framework section relating to NPDES.

ST49-4

- 4. The DEIR refers to Suisun Marsh in a number of different ways, but defines it in terms of the Delta Act. The Delta Act refers to a definition of Suisun Marsh as the area defined in Section 29101 and protected by Division 19 (commencing with Section 29000). That definition includes subtidal areas located in Suisun Bay and the Carquinez Strait. It would be helpful to more clearly define which recommendations in the Delta Plan apply to which habitat types included in the definition of Suisun Marsh.

ST49-5

- 5. Section 1.2, Overview and Use of the Delta Plan, Section 2A, Proposed Project and Alternatives, and Section 2B, Introduction to Resources Sections describes the Delta Plan's design to guide other federal, state and local agencies to use some or all of the analysis presented in this Programmatic EIR for purposes of project review and permitting to regulate future individual projects tiering from the Final EIR. Below is some suggested language that would help clarify this relationship for future individual project proponents.

ST49-6

*It is anticipated that future individual projects will require permits or other discretionary actions by state and local agencies other than the Delta Stewardship Council. These agencies, acting as responsible agencies, could*

### Response to comment ST49-3

The comment references subsection 3.3.2.2 and Table D-2 of the Draft Program EIR. The Delta Plan's degree of influence on future undefined projects, is unclear; however. The Delta Stewardship Council's review of consistency of covered actions with the Delta Plan, including confirmation of consistency with existing regulations, will be focused on the Delta and Suisun Marsh, as described in subsection 2.1.2, Covered Actions, of the Draft Program EIR and as required by the Delta Reform Act. As described in Section 2B of the Draft Program EIR, the Delta Stewardship Council does not propose or contemplate directly authorizing construction or operation of any physical activities. Rather, through the Delta Plan, the Delta Stewardship Council seeks to influence the actions, activities, and/or projects of other agencies – the details of which are under the jurisdiction and authority of the individual agencies that will propose them in the future. Therefore, the Draft Program EIR Existing Conditions descriptions provides more water quality details in the Delta and Suisun Marsh than the information provided about other portions of the Study Area. In response to this comment, the data in Table D-2 related to the most recent Clean Water Act 303(d) list of impaired water bodies and TMDLs has been expanded to include a list of 303(d) impaired water bodies in the Delta and Suisun Marsh. Table D-2 includes information to indicate which TMDLs have been adopted and which are under development. The description of TMDLs in areas located outside of the Delta that use Delta water, including those under development, are discussed in subsections 3.3.5.3.2 and 3.3.5.4.2 of the Draft Program EIR.

### Response to comment ST49-4

Please refer to response to comment ST49-3. The Delta Plan's degree of influence on future undefined projects is unclear. For these reasons, this EIR does not evaluate discharges pursuant to specific National Pollution Discharge Elimination System permits.

### Response to comment ST49-5

As described in Section 2.2.2.1, Overview of the Delta Ecosystem Restoration, the proposed Delta Plan would encourage increased and elevation-appropriate ecosystem restoration in the Delta and Suisun Marsh in accordance with the Department of Fish and Game Ecosystem

Restoration Program, which contains general recommendations for habitat based upon existing elevations.

***Response to comment ST49-6***

As described in subsection 1.4, Overview of the Delta Plan Environmental Impact Report, of the Draft Program EIR, the Delta Plan Program EIR is a program-level EIR due to the broad, program level of the Delta Plan. Future environmental documents would be completed by other agencies when they propose to implement projects that are subject to consistency reviews by the Council, or projects which are encouraged or otherwise influenced by the Delta Plan. Hence, this program EIR is not intended to provide project-level clearance for any specific project.

*rely on or tier off this Programmatic EIR in order to comply with the California Environmental Quality Act. Future individual projects must be examined on a project specific basis, in light of the Programmatic EIR, to determine whether additional environmental documentation is necessary.*

*If a responsible agency determines that, in compliance with the California Environmental Quality Act Guidelines §15162, no new effects would occur and no new mitigation would be required, the agency can rely on this existing Programmatic EIR to comply with the California Environmental Quality Act. In the event that it is determined that a future individual project would result in new or substantially greater impacts, including site-specific impacts, the agency may require the preparation of a subsequent environmental document which can be tiered from this Programmatic EIR.*

**Impact Analysis and Mitigation Measures**

There is, in general, insufficient discussion of the potential environmental impacts of various project elements. For example, the impacts associated with construction of a wetland or building a new reservoir is described in numerous places throughout the DEIR. In the detailed comments below, State Water Board staff has identified several sections where more discussion of the potential environmental impacts of aspects of the project would be appropriate.

- 6. CEQA Guidelines section 15126.4 states that mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments. Most of the DEIR's text on mitigation measures lacks a description of how the identified mitigation measures will be made legally binding.
- 7. Staff recommends that the DEIR included more information on the potential cumulative effects of implementing multiple project elements. For example, the San Joaquin River Restoration Program and the deepening of the San Joaquin Deep Water Ship Channel are identified in the draft Delta Plan as potential projects. Both are likely to individually decrease the oxygen content of the Stockton Deep Water Ship Channel and contribute to the existing dissolved oxygen impairment. There may also be interactive and cumulative impacts. Cumulative impacts related to low dissolved oxygen should be fully identified and evaluated. Likewise, the Delta Plan contemplates restoring about 60,000 acres of wetlands in the Bay-Delta, increasing upstream storage (Sites and Temperance Reservoirs), changing Delta hydrology (more San Joaquin water with higher methyl mercury and less Sacramento River water with lower methyl mercury concentrations) and changing water residence time in the Delta. All of these actions are likely to individually affect methyl mercury production and accumulation in Delta fish. This is a second example of cumulative

ST49-6

ST49-7

ST49-8

ST49-9

ST49-10

***Response to comment ST49-7***

Please see Master Response 2.

***Response to comment ST49-8***

Pursuant to Policy G P1, all applicable feasible mitigation measures identified in this EIR must be adopted for/included in all covered actions, as demonstrated through the certification process. In addition, each lead agency's project-specific environmental review must be conducted in compliance with CEQA. Please see Master Response 4.

***Response to comment ST49-9***

As described in subsection 3.4.3.2.1, 3.4.3.3.1, and 3.4.3.4.1 of the DEIR, implementation of many of the projects encouraged under the proposed Delta Plan, including dredging projects, could result in significant adverse water quality impacts that would not be mitigable to a less than significant level.

***Response to comment ST49-10***

Please refer to the response to comment ST49-9. The impacts of storage projects, floodplain modification, wetlands restoration, and water quality projects are analyzed in EIR Sections 3 through 21.

impacts from implementing multiple projects. The apparent conflicts between construction of new storage facilities, modifications of flood plains and wetland restoration; and methylmercury reduction should be discussed and potential alternatives and mitigation should be identified. Recommendations on when one issue may take priority over the another would be useful. When one issue takes precedent over another, potential mitigation measures (e.g., fish buy-back programs) should be fully examined for feasibility and overall benefit.

ST49-10

8. Regarding the Water Resources and Biological Resources chapters, in general, the focus of the impacts analysis in on construction and the mitigation measures are primarily centered on erosion control during construction. There is minimal discussion of the other potential environmental impacts of the project. Staff recommends that these sections be expanded to discuss the potential for habitat restoration activities and water resource management activities to produce conditions that would enhance production of methylmercury or make sediment-bound contaminants (such as pesticides) more available.

These potential impacts would occur during construction and after construction during project operation (i.e., after the wetland has been constructed and is functioning as designed). Increased concentrations of methylmercury and pesticides are water quality issues that could adversely impact invertebrates, fish, wildlife and humans that consume fish. The EIR should include a discussion of measures that could be implemented to mitigate the potential for project features to enhance production of methylmercury or release sediment-bound contaminants.

ST49-11

Additionally, the EIR should describe the basis for the determination, "insignificant with mitigation." This discussion should include the list of specific mitigation measures that will be implemented to ensure that water quality impacts will be insignificant once mitigated.

#### Specific Comments on Section 3, Water Resources

9. P. 3-10, lines 39-40: Should state that the DO objective of 6 mg/L only applies from 1 September – 30 November. The objective is 5 mg/L during other times of the year.

ST49-12

10. P. 3-10, lines 41-43 and in section 3.4 Impacts Analysis of Project and Alternatives: The statement that "loadings from the Stockton Regional Wastewater Control Facility has the greatest effect in reducing DO..." is not correct. The staff report and TMDL Control Plan for low dissolved oxygen in the Stockton Deep Water Ship Channel identifies three coequal factors. The DO problem can be corrected by adjusting any one of the three factors. These three factors are upstream river flows into the channel, loads of oxidizable organic material from both the upper basin and from the

ST49-13

### *Response to comment ST49-11*

In response to this comment, please see text change(s) in Section 5 of the FEIR.

### *Response to comment ST49-12*

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### *Response to comment ST49-13*

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

city of Stockton and the depth and configuration of the Ship Channel. The discussion of the DO issue is germane to this project because the Delta Plan contemplates projects that may modify each of these three factors. The basin plan amendment for dissolved oxygen in the Stockton deep water ship channel can be viewed at:

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/tmdl/central\\_valley\\_projects/san\\_joaquin\\_oxygen/basin\\_plan\\_amendment\\_5-2004/draft\\_final\\_staff\\_rpt.pdf](http://www.waterboards.ca.gov/centralvalley/water_issues/tmdl/central_valley_projects/san_joaquin_oxygen/basin_plan_amendment_5-2004/draft_final_staff_rpt.pdf)

Also, the 2005 citation should be to Van Niewenhuyse. The text should clarify that the cited study was performed before the Stockton Wastewater Treatment Plant (SWWTP) upgrade to tertiary treatment in the fall 2006. The SWWTP has since contributed far less oxygen demanding substances. However, there are still periodic violations of the water quality objectives for oxygen in the Stockton Deep Water Ship Channel.

11. P. 3-11, lines 6-15: The paragraph on selenium should be strengthened by including the following information: (1) There are two sources of selenium to the Bay-Delta: agricultural waste from the San Joaquin Valley and oil refinery waste. Historic oil refinery waste is likely the primary source of selenium to Suisun Bay, which is now present mostly in sediment. As a result, selenium from the San Joaquin Basin is now the more controllable source to the Bay-Delta. (2) The San Francisco Bay was listed because of high concentrations of selenium in several species of diving ducks and in sturgeon. (3) Selenium, like mercury, is a problem because it biomagnifies in food chains. Suisun Bay supports large populations of the introduced clam, *Protomocorbula amurensis*. The clam accumulates large concentrations of selenium and is extensively consumed by both sturgeon and diving ducks. Factors that increase the populations of the introduced clam or the bioavailability of selenium to the clam will worsen the water quality impairment.

12. P. 3-11, lines 16-25: The discussion on mercury should be updated to be consistent with the Delta Methyl Mercury TMDL adopted by the Central Valley Regional Water Quality Control Board on April 22, 2010 and approved by the USEPA on October 20, 2011, as follows:

- a. Describe the recently adopted methyl mercury tissue objectives for the Bay-Delta. These objectives can be converted to a water column value for methyl mercury. Include a similar description of the San Francisco Bay mercury TMDL since projects are likely to occur in Suisun Bay.
- b. Describe how TMDL implementation requirements apply to both the construction and operation of proposed projects being considered in the Delta Plan. This should include wetland restorations, flood conveyance, water management, and water storage facilities.
- c. Important documents to review include:

### **Response to comment ST49-14**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### **Response to comment ST49-15**

Comment noted. The suggested measure would be implemented, as appropriate, as part of the permitting process required of a given project proponent.

- i. The TMDL document or resolution R5-2010-0043 available at [http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/resolutions/r5-2010-0043\\_res.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/resolutions/r5-2010-0043_res.pdf)
- ii. Staff Report on Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Methyl Mercury and Total Mercury in the Sacramento-San Joaquin Delta Estuary available at [http://www.swrcb.ca.gov/centralvalley/water\\_issues/tmdl/central\\_valley\\_projects/delta\\_hq/april\\_2010\\_hq\\_tmdl\\_hearing/apr2010\\_bpa\\_staffrpt\\_final.pdf](http://www.swrcb.ca.gov/centralvalley/water_issues/tmdl/central_valley_projects/delta_hq/april_2010_hq_tmdl_hearing/apr2010_bpa_staffrpt_final.pdf)
- iii. Potential mitigation measures could include requiring that project proponents design projects to minimize methyl mercury production, or maximize contaminant degradation before allowing off-sight movement.  
Many water bodies in both the Sacramento and San Joaquin River Basins are also on the current 303(d) list because of elevated concentrations of mercury in fish. The Delta Plan lists several potential projects in these waters. The peer reviewed literature has determined that similar projects elsewhere have contributed to methyl mercury production and bioaccumulation in fish. Such projects include construction of new storage facilities, modifications of flood plains and wetland restoration actions. The DEIR should include a table or map identifying both the listed water bodies and all known or proposed projects in these waters that have the potential to increase methyl mercury levels in fish. The 2010 303(d) List is available at: [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/integrated2010.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml)

ST49-15

13.P. 3-79, lines 2-42: The section titled "Effects of Project Operations" under Reliable Water Supply should include a paragraph specifically discussing the potential of any proposed project to cause or contribute to violations of methyl mercury tissue objectives after reviewing requirements for water management and water storage facilities included in the Delta Mercury Control Program in the Basin Plan for the Sacramento River and San Joaquin River. The review should include projects in both the Delta and upland watersheds. The DEIR should then evaluate whether the potential impacts are significant or not.

ST49-16

14.P. 3-80, Section 3.4.3.1.2: The DEIR considers impacts to groundwater supplies to be less than significant. However, revisions to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) could require increases in surface water flows. In response, surface water users may choose to pump groundwater instead of relying on surface water flows. The DEIR states there are critically over drafted groundwater basins in the region affected by the proposed Delta Plan. The DEIR should include a discussion and evaluation of these issues and should propose mitigation as appropriate.

ST49-17

### ***Response to comment ST49-16***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### ***Response to comment ST49-17***

The proposed Delta Plan contains recommendations (WR R9, WR R10, and WR R11) to sustainably use groundwater and to reduce groundwater overdraft situations. As described in Section 2A of the Draft Program EIR and Section 2 of the RDEIR, it is anticipated that under the proposed Delta Plan, water users would develop other local and regional water supplies in accordance with Delta Plan policies and recommendations. The EIR recognizes that in some geographical areas, this could lead to retiring land from agricultural production, as described in Section 7, Agriculture and Forestry Resources.

15. Pages 3-83, Section titled, "Effects of Project Operations:" This section should include a paragraph specifically discussing the potential for any proposed project to cause or contribute to violations of methyl mercury tissue objectives after reviewing requirements in the Delta Mercury Control Program for wetland restoration, flood control and water management. The section should then evaluate whether the potential impacts are significant or not.

ST49-18

This section should also include a paragraph specifically discussing the potential for any proposed project to cause or contribute to violations of selenium tissue objectives in Suisun Bay. Impacts may occur two ways. First, increased salinity in the delta in late summer may allow more stable populations of the introduced clam in the western delta and eastern Suisun Bay, which can be expected to increase selenium availability to sturgeon and diving ducks. Some of these changes are described at: [http://www.mercurynews.com/science/ci\\_18903921](http://www.mercurynews.com/science/ci_18903921). Second, an impact of locating a new Delta conveyance system on the Sacramento River would be to increase the amount of San Joaquin River water that flows through the Delta to Suisun Bay (water that is now re-entrained at the State and Federal pumping facilities and used for agriculture in the San Joaquin Valley). This will increase the loads of selenium exported out of the San Joaquin Basin to Suisun Bay. The section should evaluate whether these impacts are significant.

ST49-19

16. P. 3-84, Section 3.4.3.2.2: The DEIR indicates that there are critically over drafted groundwater basins in the region affected by the proposed Delta Plan, in particular, the Eastern San Joaquin County groundwater basin. Section 1.3.2 of Appendix D of the DEIR indicates there are local groundwater ordinances, and specifically mentions San Joaquin County's groundwater ordinance. However, that ordinance requires that a permit be obtained for use of extracted groundwater outside the county boundaries, and does not apply to use of groundwater within county boundaries. Given the potential for increased groundwater pumping in a region that is already identified as critically over drafted, the DEIR should reevaluate the determination regarding groundwater impacts in the San Joaquin basin and propose mitigation measures as appropriate.

ST49-20

17. P. 3-89, lines 9-11: This paragraph should be reworded as follows: The EIR states, "The suggested mitigation involves the participation in an offset program to ensure no net increase in methyl mercury loading." Currently there is no offset program in place. As a result, this may not serve as adequate mitigation. In Phase 1, the Delta Mercury Control Program requires dischargers, either individually or collaboratively, to conduct control studies to evaluate existing control methods and, as needed, develop additional control methods that could be implemented to achieve methyl mercury load and waste load allocations. During Phase 2 of the Delta Mercury Control Program, dischargers shall implement methyl mercury control programs.

ST49-21

### **Response to comment ST49-18**

Please refer to response to comment ST49-11.

### **Response to comment ST49-19**

As described on page 3-84 of the DEIR, the potential water quality impacts of Delta ecosystem restoration were determined to be significant at a program level. This conclusion may change when specific information becomes available for future projects.

### **Response to comment ST49-20**

Please refer to the response to comment ST49-17.

### **Response to comment ST49-21**

Comment noted. Until offset programs are implemented, the ongoing Delta Mercury Control Program, established by the SWRCB and other agencies, requires dischargers to conduct control studies to evaluate existing control methods and develop, as needed, additional control methods to achieve methyl mercury load and waste load allocations in accordance with the TMDL; and subsequently, implement methyl mercury control programs.

18. P. 3-92, Section 3.4.3.6.1: Under Mitigation Measure 3-1, the EIR should provide an extended discussion on how the Proposed Project will not contribute to further impairment of any constituent and/or parameter listed on the Clean Water Act 303(d) list or TMDL, or discussed elsewhere in the document, either as a constituent of concern or found through general research of water quality problems and history within and downstream of the project site.

ST49-22

19. P. E-6, Table E-4: The information provided in Table E-4, intended to support discussions on water quality in Section 3 of the DEIR, is incomplete and inaccurate. This table states that the data presented reflect water quality in both Suisun Bay and Suisun Marsh and cites the San Francisco Bay Regional Monitoring Program (RMP) as the source of the data. By design, the RMP only collects data from Suisun Bay. The amount of data for the period 1999 to 2008 represents a total of about 45 to 50 data points for each constituent analyzed. The RMP does not collect data from Suisun Marsh. This table needs to be modified to reflect all the available Suisun Bay data and should accurately reflect the source and results of the Suisun Marsh data. A map of the sampling locations would be helpful.

ST49-23

**Appendix D. Regulatory Framework**

Following are some specific comments on Appendix D- Regulatory Framework. In addition, we provide suggested clarifying language and suggestions for additional sections in Appendix D that detail the Water Boards' regulatory framework under the Water Code, California Constitution, Clean Water Act and adopted plans and policies.

ST49-24

20. In general, text describing regulatory authority, jurisdiction or delegations should include reference to the appropriate sections of the Water Code, the California Code of Regulations, or the appropriate regulatory document.

21. P. D-1, Section 1.1.2 and P. D-10, Section 1.1.5: Since the project area (Delta) covers more than one Regional Board and the proposed project may involve changes to the appropriation of water, this section should not be limited to only a discussion of the Central Valley Regional Water Quality Control Board but should also include a discussion of the State Water Board and the San Francisco Bay Regional Water Board.

ST49-25

22. Water Quality Certification:

On P. D-2, line 5 the document states that the State Water Board has delegated the specific responsibilities of the development and enforcement of water quality objectives and implementation plans to the Central Valley Regional Water Quality Control Board. This sentence should be corrected to state that the State Water

ST49-26

***Response to comment ST49-22***

Without specific details of future projects, it is not possible to develop quantitative thresholds of significance. Nevertheless, this EIR considers whether potential future actions that could be encouraged by the Delta Plan may cause significant adverse environmental effects. Hence, this EIR takes a conservative approach and assumes that most significant adverse impacts that have been identified for similar projects, following environmental review by other lead agencies, could and may be significant. In response to this comment, please see text change(s) in Section 5 of the FEIR.

***Response to comment ST49-23***

In response to this comment, Table E-4 of the Draft Program EIR has been modified to reflect the data presented in the cited sources.

***Response to comment ST49-24***

Comment noted.

***Response to comment ST49-25***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST49-26***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

Board has delegated specific responsibilities for the development and enforcement actions to the Central Valley and San Francisco Bay Regional Water Quality Control Boards. This section should be updated and the following information included in the discussion:

*The Federal Clean Water Act (33 U.S.C. §§ 1251-1387) was enacted "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (33 U.S.C. § 1251(a).) Section 101 of the Clean Water Act (33 U.S.C. § 1251 (g)) requires federal agencies to "co-operate with the State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.*

*Section 401 of the Clean Water Act (33 U.S.C. §1341) requires every applicant for a federal license or permit which may result in a discharge into navigable waters to provide the licensing or permitting federal agency with certification that the project will be in compliance with specified provisions of the Clean Water Act, including water quality standards and implementation plans promulgated pursuant to section 303 of the Clean Water Act (33 U.S.C. § 1313). Clean Water Act section 401 directs the agency responsible for certification to prescribe effluent limitations and other limitations necessary to ensure compliance with the Clean Water Act and with any other appropriate requirement of state law. Section 401 further provides that state certification conditions shall become conditions of any federal license or permit for the project. The State Water Board Executive Director may issue a decision on a water quality certification application. (Cal. Code Regs., tit. 23, § 3838, subd. (a).) The California Regional Water Quality Control Boards have adopted, and the State Water Board has approved, water quality control plans (basin plans) for each watershed basin in the State. The basin plans designate the beneficial uses of waters within each watershed basin, and water quality objectives designed to protect those uses pursuant to Section 303 of the Clean Water Act. (33 U.S.C. § 1313.) The beneficial uses together with the water quality objectives that are contained in the basin plans constitute State water quality standards.*

ST149-26

*If a United States Army Corps of Engineers permit, or any other federal permit, is required for a future individual project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification(s) must be obtained prior to initiation of project activities.*

*The California Regional Water Quality Control Boards have adopted, and the State Water Board has approved, water quality control plans (basin plans) for each watershed basin in the State. The basin plans designate the beneficial uses of waters within each watershed basin, and water quality objectives designed to protect those uses pursuant to Section 303 of the Clean Water Act. (33 U.S.C. § 1313.) The beneficial uses together with the water quality objectives that are contained in the basin plans constitute State water quality standards.*

*No comments*

*- n/a -*

*Section 401 water quality certifications are issued by the Regional Water Quality Control Boards, the State Water Resources Control Board's Division of Water Quality, and the State Water Board's Division of Water Rights. Each entity has certification authority as defined by the California Code of Regulations, §3855.*

- *The Division of Water Quality is responsible for issuing water quality certifications for projects which may fall under the jurisdiction of more than one regional board.*
- *The Division of Water Rights is responsible for issuing water quality certifications associated with one or more of the following:*
  1. *An appropriation of water;*
  2. *A hydroelectric facility, and the proposed activity requires a Federal Energy Regulatory Commission (FERC) license or amendment to a FERC license; or*
  3. *Any other diversion of water for domestic, irrigation, power, municipal, industrial, or other beneficial use.*
- *The Regional Boards are responsible for all other projects within their regions for which a discharge may occur.*

*Required items for issuance of a Clean Water Act Section 401 Water Quality Certification are based on Sections 3836 and 3856 of Title 23 of the California Code of Regulations.*

The Final EIR should clarify that (a) there are no waivers for Clean Water Act Section 401 Water Quality Certifications in the state of California; (b) a Clean Water Act Section 401 Water Quality Certification serves as both a certification, in part or in whole, of a federal permit, under Section 401 of the Clean Water Act, and as a Waste Discharge Requirement under the Porter-Cologne Water Quality Control Act; and (c) under Section 401 of the Clean Water Act, the state of California can review and approve, condition, or deny all federal permits that may result in a discharge to waters of the State, including wetlands,

23. P. D-2, Lines 34-38: Please list the NPDES permit(s) separately. For example, the General Permit for Storm Water Discharges Associated with Construction Activities, Construction General Permit Order No. 2009-009-DWQ and the Dewatering and other Low Threat Discharges to Surface Waters, Central Valley Regional Water Quality Control Board Order No. R5-2008-0085 (supersedes Order No. 5-00-175) are both NPDES permits. Each of these NPDES permits should be listed separately in Section 1.1.2 of Appendix D (Regulatory Framework), as these permits will be issued to, or apply to, future individual project proponents.

24. P. D-2, line 2: This section should include reference to the Porter-Cologne Act.

ST49-26

ST49-27

ST49-28

### **Response to comment ST49-27**

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### **Response to comment ST49-28**

In response to this comment, please see text change(s) in Section 5 in this FEIR.

25. P. D-3, Table D-1: Staff could not locate a specific discussion of the National Toxics Rule within the DEIR, except as a footnote to Table D-1 of Appendix D (Regulatory Framework). It may be useful to add some additional reference to the National Toxics Rule and its application. ST49-29

26. P. D-3, Table D-1: There are a couple of errors in the table regarding the list of Water Quality Objectives (WQOs) applicable to Suisun Marsh, identified below:

a. For Mercury (Hg): the objectives listed in the DEIR are 0.025 and 2.1 ug/l (these are referenced as adopted from the San Francisco Bay Mercury TMDL). The objectives that apply to Suisun Bay and Carquinez Strait taken from the San Francisco Bay Mercury TMDL are 0.2 ppm in large fish (human health protection); 0.03 ppm in small fish (wildlife protection) and a 2.1 ug/L 1-hour avg. water column concentration. Objectives that apply to Suisun Marsh only are 0.025 ug/L 4-day avg.; 2.1 ug/L 1-hour avg. and 0.051 ug/L 30 day avg (CTR value) and are taken from the San Francisco Bay Basin Plan. ST49-30

b. The water quality objectives listed for the San Francisco Bay Basin Plan in Table D-1 are a mixture of numbers from Table 3-3 in the Basin Plan (Marine objectives) and Table 3-6 (Agricultural Supply). This may cause some confusion because the objectives for San Francisco Bay usually reflect the most stringent conditions (marine or fresh). It is unlikely that the Agricultural Supply objectives will be useful and should not be included. It is difficult to differentiate which objectives are which without looking at the long list of footnotes. In addition, not all parameters in Table 3-6 are listed in Table D-1.

27. P. D-12, Section 1.2.4: This section is missing a discussion regarding the State Water Board's authorities under the California Constitution (article X, section 2) and Water Code section 100, which prohibit the waste, unreasonable use, unreasonable method of use, and unreasonable method of diversion of water. The constitutional doctrine of reasonable use applies to all water users, regardless of the basis of the water right, which serves as a limitation on every water right and every method of diversion. Water Code section 275 directs the State Water Board to take all appropriate proceedings or actions to prevent waste or violations of the reasonable use standard. ST49-31

28. P. D-12, line 191-194: The statement referring to the State Water Board's permitting authority over underground streams should be restated to read "subterranean streams flowing through known and definite channels". ST49-32

### ***Response to comment ST49-29***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### ***Response to comment ST49-30***

In response to this comment, Table D-1 of the Draft Program EIR has been modified to reflect more recent data.

### ***Response to comment ST49-31***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### ***Response to comment ST49-32***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

29. P. D-13, line 253: The following sentence should include the word identified in italics, underline below:

"The SWRCB and the RWQCBs have *been* delegated federal authority to implement the requirements of the federal CWA in California, including issuing federal NPDES permits..."

ST49-33

30. P. D-14 lines 270-272: Please add the following additional text identified in italics and underline to the end of the sentence as follows:

"Freshwater criteria apply to waters of salinity less than 1 parts per thousand, seawater criteria are for water greater than 10 parts per thousand, and estuarine waters use the more stringent of the two possible criteria, *in absence of estuary-specific criteria*."

ST49-34

31. P. D-14, Table D-2: Please update Table D-2 with the following corrections:

- a. The correct date for the San Joaquin River Diazinon and Chlorpyrifos TMDL is 2006 (not 2002). For your reference, current dates on completed TMDLs for the San Francisco Bay and Central Valley Regions can be found at: [http://www.waterboards.ca.gov/centralvalley/water\\_issues/tmdl/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/tmdl/index.shtml) and [http://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/TMDLs/](http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/)
- b. In addition to Clear Lake, the San Francisco Bay Water Board is also working on a nutrient TMDL for Suisun Marsh.

ST49-35

31. P. D-15, Table D-2: Missing from this table is mention of the Bay Protection and Toxics Cleanup Program (Water Code section 13390 et. seq.). The Central Valley Water Board identified the following toxic hot spots. The Central Valley Water Board has since adopted TMDLs and Basin Plan control programs to address each of these hot spots:

- Mercury in the entire Delta and the Cache Creek watershed including Clear Lake
- Low dissolved oxygen concentrations in the San Joaquin River in the vicinity of the City of Stockton
- Diazinon from orchard dormant spray runoff in the entire Delta
- Diazinon and chlorpyrifos from urban stormwater runoff in Morrison Creek in the City of Sacramento and Mosher Slough, 5 Mile Slough, the Calaveras River, and Mormon Slough in the City of Sacramento
- Chlorpyrifos from irrigation tailwater in French Camp Slough, Duck Slough, Paradise Cut and Ulatris Creek.

ST49-36

### Response to comment ST49-33

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### Response to comment ST49-34

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### Response to comment ST49-35

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### Response to comment ST49-36

Table D-2 includes line items for mercury in Cache Creek and Delta; dissolved oxygen for San Joaquin River TMDL and Phase II under the "Stockton Deep Water Ship Channel" (now combined) and diazinon for the Delta under the "Sacramento-San Joaquin Delta. In response to this comment, Table D-2 of the Draft Program EIR has been amended to include line items for diazinon and chlorpyrifos for Morrison Creek, Mosher Slough, 5 Mile Slough, Calaveras River, Mormon Slough; and chlorpyrifos for irrigation tailwater in French Camp Slough, Duck Slough, Paradise Cut, and Ulatris Creek.

32. P. D-41, Section 3.1.2.4: There should be a parallel section in the State Regulatory Framework discussion or elsewhere in this Appendix that discusses the Regional Water Board's role in certifying compliance with section 401, a prerequisite in many cases to issuance of a 404 permit by the Army Corps of Engineers.

ST49-37

33. P. D-147, Section 15.1.3: As previously mentioned, every applicant for a federal license or permit which may result in a discharge into navigable waters must provide the licensing agency with certification that the project will be in compliance with Section 401 of the Clean Water Act. This includes hydropower projects under the jurisdiction of the Federal Energy Commission (FERC). See the discussion above regarding the State Water Board, Division of Water Rights' authority to issue water quality certification for these projects.

ST49-38

34. P. D-187, lines 6467-6468: Please replace this citation with the most recent version of the San Francisco Bay Basin Plan, dated 2010. For reference, the Water Quality Control Plan (Basin Plan) for the San Francisco Bay Basin can be found here: [http://www.swrcb.ca.gov/sanfranciscobay/basin\\_planning.shtml](http://www.swrcb.ca.gov/sanfranciscobay/basin_planning.shtml).

ST49-39

35. P. D-13, line 233: The Porter-Cologne Water Quality Control Act is briefly referenced under Section 1.2.8 of Appendix D in combination with a brief reference to the Water Quality Control Plans and Waste Discharge Requirements. State Water Board staff recommends that the Final EIR provide separate discussions of the Porter-Cologne Water Quality Control Act, Waste Discharge Requirements, and Water Quality Control Plans under Section 1.2 of Appendix D (Regulatory Framework) for the reader's clarification.

Water Board staff recommend the following text be added to Appendix D to describe the Water Boards' role under the Clean Water Act:

a. Porter-Cologne Water Quality Control Act (2011 version)

*The Porter-Cologne Water Quality Control Act (Act) established the State Water Board and divided the state into nine regions, each overseen by a regional board. The nine regional boards have the primary responsibility for the coordination and control of water quality within their respective jurisdictional boundaries. Under the Porter-Cologne Water Quality Control Act, water quality objectives are limits or levels of water quality constituents or characteristics established for the purpose of protecting beneficial uses.*

ST49-40

*The Act requires the Regional Water Quality Control Boards to establish water quality objectives while acknowledging that water quality may be changed to some degree without unreasonably affecting beneficial uses. Designated beneficial uses, together with the corresponding water quality objectives, and an antidegradation policy also constitute water quality standards under the federal*

**Response to comment ST49-37**

In response to this comment, please see text change(s) in Section 5 in this FEIR.

**Response to comment ST49-38**

Please refer to response to comment ST49-37.

**Response to comment ST49-39**

The reference list in subsection 21.0, References, has been amended to include the 2010 San Francisco Bay Basin Plan.

**Response to comment ST49-40**

In response to this comment, please see text change(s) in Section 5 in this FEIR.

Clean Water Act. Therefore, the water quality objectives provide requirements for water quality control.

b. Waste Discharge Requirements

If the United States Army Corps of Engineers determines that only non-jurisdictional waters of the State (i.e., "non-federal" waters of the State) are present in the Proposed Project area, the Proposed Project will require a Waste Discharge Requirement permit(s) to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation.

For more information on the WDR processes, visit the Central Valley Water Board website at:  
[http://www.waterboards.ca.gov/centralvalley/water\\_issues/water\\_quality\\_certification/](http://www.waterboards.ca.gov/centralvalley/water_issues/water_quality_certification/)

c. Water Quality Control Plans

Please see the discussion below for more details.

d. Construction Storm Water General Permit

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities, Construction General Permit Order No. 2009-009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan.

ST49-40

For more information on the Construction General Permit, visit the State Water Resources Control Board website at:  
[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/constpermits.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml)

e. Dewatering and other low threat discharges to surface waters

Individuals, public agencies, private businesses, and other legal entities discharging relatively pollutant-free wastewaters that pose little or no threat to the quality of surface waters, for 4 months or less in duration or have an average dry weather flow less than 0.25 million gallons per day, may obtain authorization under this General Order to discharge.

No comments

- n/a -

For more information on the Dewatering and Other Low Threat Discharges to Surface Waters Permit, visit the State Water Resources Control Board website at:

[http://www.swrcb.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_orders/r5-2008-0081.pdf](http://www.swrcb.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2008-0081.pdf)

ST49-40

As applicable to future individual projects, the Final EIR should provide a discussion on Central Valley Regional Water Quality Control Board Order No. R5-2008-0082 (NPDES Permit No. CAG995002, which expires in June 2013) or any subsequent revised order.

37. Water Board staff recommend the following text be added to Appendix D, Regulatory Framework to describe the plans and policies of the Water Boards.

- a. Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS): Although salinity was described in some subsections of the document, Water Board staff suggests including a concise summary of the Central Valley Salinity Alternatives for Long-Term Sustainability program in Section 1.2 of Appendix D (Regulatory Framework) and as applicable in Section 3 (Water Resources) of the EIR. The following paragraphs are provided for your consideration.

*In 2006, the Central Valley Regional Water Quality Control Board, the State Water Resources Control Board, and stakeholders began a joint effort to address salinity and nitrate problems in California's Central Valley and adopt long-term solutions that will lead to enhanced water quality and economic sustainability. This effort is referred to as the CV-SALTS Initiative.*

*The goal of CV-SALTS is to develop a comprehensive region-wide Salt and Nitrate Management Plan (SNMP) describing a water quality protection strategy that will be implemented through a mix of voluntary and regulatory efforts. The SNMP may include recommendations for numeric water quality objectives, beneficial use designation refinements, and/or other refinements, enhancements, or basin plan revisions. The Salt and Nitrate Management Plan and will serve as the basis for amendments to the three Basin Plans that cover the Central Valley Region (Sacramento River and San Joaquin River Basin Plan, the Tulare Lake Basin Plan and the Sacramento/San Joaquin Rivers Bay-Delta Plan). The basin plan "amendments" will likely establish a comprehensive implementation plan to achieve water quality objectives for salinity (including nitrate) in the Region's surface waters and groundwater; and the Salt and Nitrate Management Plan may include recommendations for numeric water quality objectives, beneficial use designation refinements, and/or other refinements, enhancements, or basin plan revisions.*

ST49-41

For more information on CV-SALTS, please visit our website at:

## ***Response to comment ST49-41***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

[http://www.swrcb.ca.gov/rwqcb5/water\\_issues/salinity/](http://www.swrcb.ca.gov/rwqcb5/water_issues/salinity/)

- b. Statement of Policy With Respect to Maintaining High Quality of Waters in California (State Water Board Resolution 68-16: We could not locate a discussion of the State Antidegradation Policy (Statement of Policy with Respect to Maintaining High Quality of Waters in California, per State Water Board Resolution 68-16) within the DEIR. The following paragraphs are provided for your consideration.

*A key policy of California's water quality program is the State's Antidegradation Policy. This policy, formally known as the Statement of Policy with Respect to Maintaining High Quality Waters in California (State Water Board Resolution No. 68-16), restricts degradation of surface and ground waters. In particular, this policy protects water bodies where existing quality is higher than necessary for the protection of beneficial uses. Under the Antidegradation Policy, any actions that can adversely affect water quality in all surface and ground waters must:*

*(1) Meet Waste Discharge Requirements which will result in the best practicable treatment or control of the discharge necessary to assure that a pollution or nuisance will not occur and the highest water quality consistent with maximum benefit to the people of the State will be maintained; (2) Not unreasonably affect present and anticipated beneficial use of the water; and (3) Not result in water quality less than that prescribed in water quality plans and policies.*

*The State Antidegradation Policy meets the federal requirement that states adopt an antidegradation policy consistent with 40 Code of Federal Regulations section 131.12.*

For more information on this policy, please visit our website at:  
[http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/1968/rs68\\_016.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/1968/rs68_016.pdf).

- c. San Francisco Bay Regional Water Quality Control Board, San Francisco Bay Basin Water Quality Control Plan; Central Valley Regional Water Quality Control Board, Sacramento-San Joaquin River Water Quality Control Plan, and Tulare Lake Water Quality Control Plan (Basin Plans):

*The Regional Water Quality Control Boards are required to formulate and adopt Basin Plans for all areas under their jurisdiction under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to*

## ***Response to comment ST49-42***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

## ***Response to comment ST49-43***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

*adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 Code of Federal Regulation Section 131.36, and the California Toxics Rule, 40 Code of Federal Regulation Section 131.38.*

*The Basin Plans are subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. Basin Plans are updated and revised periodically as required, using Basin Plan amendments. Once a Basin Plan amendment is adopted in noticed public hearings, it must be approved by the State Water Resources Control Board, Office of Administrative Law and in some cases, the United States Environmental Protection Agency. Basin Plan amendments only become effective after they have been approved by the Office of Administrative Law and in some cases, the United States Environmental Protection Agency. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues.*

For more information on the Water Quality Control Plan for the San Francisco Bay Basin, please see:

[http://www.waterboards.ca.gov/sanfranciscobay/basin\\_planning.shtml#2010basinplan](http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml#2010basinplan)

For more information on the Water Quality Control Plan for the Sacramento and San Joaquin River Basins, please see:

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/index.shtml).

For more information on the Water Quality Control Plan for the Tulare Lake Basin, please see:

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/)

- d. Policy for Implementing Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries for California : A discussion on the Policy for Implementing Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries for California should be incorporated into Table D-1 and Section 1.2.9 of Appendix D (Regulatory Framework) of the Final EIR for the reader's clarification, as follows:

*The Policy for Implementing Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California is referred to as the State Implementation Policy.*

## ***Response to comment ST49-44***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

ST49-43

ST49-44

*This state policy for water quality control, adopted by the State Water Resources Control Board on March 2, 2000 and effective by May 22, 2000, applies to discharges of toxic pollutants into the inland surface waters, enclosed bays, and estuaries of California subject to regulation under the State's Porter-Cologne Water Quality Control Act (Division 7 of the Water Code) and the federal Clean Water Act. Such regulation may occur through the issuance of National Pollutant Discharge Elimination System permits, or other relevant regulatory approaches.*

*This Policy establishes: (1) implementation provisions for priority pollutant criteria promulgated by the United States Environmental Protection Agency through the National Toxics Rule (40 CFR 131.36) (promulgated on December 22, 1992 and amended on May 4, 1995) and through the California Toxics Rule (40 CFR 131.38) (promulgated on May 18, 2000 and amended on February 13, 2001), and for priority pollutant objectives established by Regional Water Quality Control Boards in their water quality control plans; (2) monitoring requirements for 2,3,7,8-TCDD equivalents; and (3) chronic toxicity control provisions. In addition, this Policy includes special provisions for certain types of discharges and factors that could affect the application of other provisions in this Policy.*

For more information on the Policy for Implementing Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California, please see: [http://www.swrcb.ca.gov/water\\_issues/programs/state\\_implementation\\_policy/](http://www.swrcb.ca.gov/water_issues/programs/state_implementation_policy/)

- e. Groundwater Quality Protection Strategy for the Central Valley: Water Board staff suggests that Appendix D mention the Groundwater Quality Protection Strategy being developed by the Central Valley Regional Board. The Groundwater Quality Protection Strategy is being developed to assure comprehensive, consistent, and coordinated protection of the beneficial uses of groundwater throughout the Central Valley, and to ensure a sustainable, high quality water supply for the Central Valley. Future projects proposed under the Delta Plan should be coordinated with any future groundwater management plans developed under the Groundwater Quality Protection Strategy.
- f. Water Board staff recommends that Appendix D, Regulatory Framework include text describing State Water Board's water rights authorities under the Water Code and the California Constitution. The following language is provided for your consideration:

ST49-44

ST49-45

ST49-46

### **Response to comment ST49-45**

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### **Response to comment ST49-46**

In response to this comment, please see text change(s) in Section 5 in this FEIR.

*To obtain a new appropriative water right, a person must file a water right application with the State Water Board to appropriate water and use it for a reasonable and beneficial purpose. In part, the water right application must identify the nature and amount of the proposed use, the proposed place of diversion, the type of the diversion works, the proposed place of use, and sufficient information to demonstrate a reasonable likelihood that the unappropriated water is available for the proposed appropriation. In acting on an application, the State Water Board must consider the relative benefit to be derived from all beneficial uses of water concerned, including the preservation and enhancement of fish and wildlife, and uses protected in a relevant water quality control plan. The State Water Board may impose terms and conditions that will best develop, conserve, and utilize in the public interest the water sought to be appropriated, protect fish and wildlife, and carry out water quality control plans. In issuing permits and licenses, or approving changes to those rights, the State Water Board may include terms and conditions to protect existing water rights, the public interest, and the public trust, and to ensure that water is put to beneficial use.*

*The California Constitution (article X, section 2) and Water Code section 100 prohibit the waste, unreasonable use, unreasonable method of use, and unreasonable method of diversion of water. In determining the reasonableness of a particular use of water or method of diversion, other competing water demands and beneficial uses of water must be considered. A particular water use or method of diversion may be determined to be unreasonable based on its impact on fish, wildlife, or other instream beneficial uses. What constitutes a reasonable water use depends on the entire circumstances presented and varies as current conditions change. The State Water Board also has "an affirmative duty to take the public trust into account in the planning and allocation of water resources and to protect the public trust uses whenever feasible." The purpose of the public trust doctrine is to protect navigation, fishing, recreation, environmental values, and fish and wildlife habitat. Under the public trust doctrine, the State is the administrator of the public trust for the people of California. The State retains supervisory control over the navigable waters of the State and the lands underlying those waters.*

*The State's public trust responsibilities extend to protecting navigable waters from harm caused by a diversion of nonnavigable tributaries. Before the State Water Board approves an appropriative water right diversion, it must consider the effect of such diversions on public trust resources and avoid or minimize any harm to those resources where feasible. In applying the public trust doctrine, the State Water Board has the power to reconsider past water allocations even if the Board considered public trust impacts in its original water allocation decision. Thus, the State Water Board may exercise its authority under the doctrines of reasonable use and the public trust to*

*No comments*

*- n/a -*

ST149-46

*address diversions of surface water or groundwater that reduce instream flows and thus adversely affect fish, wildlife, or other instream beneficial uses.*

#### **Comments on Fifth Staff Draft Delta Plan**

Staff recommends the following changes to the Fifth Draft Delta Plan regarding Ecosystem Restoration Policy (ER P1): Staff recommends appending the language in ER P1 and the introduction to that policy in the *Update Delta Flow Requirements* section of the Delta Plan. These changes would provide additional background information and recognize the Department of Fish and Game's (DFG) important role in successfully implementing this policy by developing flow recommendations and conducting instream flow studies for high-priority tributaries in the Delta watershed. The following additions, shown in underline, are recommended to pages 85 and 86 of the August 2, 2011 draft, and also to other areas of the Delta Plan, as appropriate, that refer to the same policy.

The SWRCB is taking, or has recently taken, several other actions related to updating flow objectives for the Delta and its high-priority tributaries. In 2010, the SWRCB completed its report titled *Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem (SWRCB 2010a)*. This report provides an assessment of the flows needed to protect the Delta and its ecological resources, but does not address other public trust considerations. While informing the broader flow-standard-setting process, the report also underscores the importance to California of resolving as soon as possible what those future flow regimes need to be. In addition, the SWRCB is coordinating with DWR in its preparation of environmental documentation for the Bay Delta Conservation Plan (BDCP) and may consider these environmental documents and other information developed for the BDCP in its proceedings to review flow requirements in the Delta. Also in 2010, the SWRCB completed a report titled *Instream Flow Studies for the Protection of Public Trust Resources: A Prioritized Schedule and Estimate of Costs (SWRCB 2010b)*. The SWRCB coordinated with DFG in developing these schedules, as required by Water Code Section 85087. DFG is required by the Public Resources Code (sections 10000-10005) to develop flow recommendations for watercourses and streams throughout the state for which minimum flow levels need to be established in order to assure the continued viability of fish and wildlife resources. These flow recommendations are considered by the SWRCB in regulatory actions related to appropriation of water and other planning activities.

#### **Problem Statement**

The State cannot effectively plan, finance, and build new conveyance and storage facilities to improve the reliability of water exports from the Delta watershed when future Bay-Delta Water Quality Control Plan objectives and flow requirements are not known.

#### **Policies**

ER P1 Development, implementation, and enforcement of new and updated flow requirements for the Delta and high-priority tributaries are key to the achievement of the

## ***Response to comment ST49-47***

This is a comment on the project, not on the EIR.

coequal goals. The State Water Resources Control Board should update the Bay-Delta Water Quality Control Plan objectives and establish flows as follows:

- a) By June 2, 2014, adopt and implement updated flow objectives for the Delta that are necessary to achieve the coequal goals (28).
- b) By June 2, 2018, develop flow criteria for high-priority tributaries in the Delta watershed that are necessary to achieve the coequal goals (29).

ST49-47

Per 2009 legislation (SBX7 1) DFG is conducting instream flow studies for high-priority tributaries in the Delta watershed in order to develop flow recommendations. These flow recommendations will inform the SWRCB's development of flow criteria.

Prior to the establishment of revised flow objectives and criteria identified above, the existing Bay-Delta Water Quality Control Plan objectives shall be used to determine consistency with the Delta Plan.

In addition, the following change is recommended to the footnote on page 86:

SWRCB staff will work with the Delta Stewardship Council and DFG to determine priority streams. As an illustrative example, priority streams could include the Merced River, Tuolumne River, Stanislaus River, Lower San Joaquin River, Deer Creek (tributary to Sacramento River), Lower Butte Creek, Mill Creek (tributary to Sacramento River), Cosumnes River, and American River (SWRCB 2011a, SWRCB 2011b).

ST49-48

**Conclusion**

Water Board staff appreciates the opportunity to provide input on the Delta Plan DEIR. If you have any questions concerning these comments or would like to discuss any other issues associated with the Delta Plan, please contact the following staff. For questions regarding water quality, please contact Stephanie Fong with the Central Valley Regional Water Board at (916) 464-4822 or [sfong@waterboards.ca.gov](mailto:sfong@waterboards.ca.gov), or Naomi Feger with the San Francisco Bay Regional Water Board at (510) 622-2328 or [nfeger@waterboards.ca.gov](mailto:nfeger@waterboards.ca.gov). For all other issues, please contact me at (916) 445-5997 or [asnider@waterboards.ca.gov](mailto:asnider@waterboards.ca.gov).

ST49-49

Sincerely,

ORIGINAL SIGNED BY

Anne Snider, Environmental Scientist  
Division of Water Rights

***Response to comment ST49-48***

This is a comment on the project, not on the EIR.

***Response to comment ST49-49***

Comment noted.

# ST50 State Lands Commission

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

CALIFORNIA STATE LANDS COMMISSION  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202



CURTIS L. FOSSUM, Executive Officer  
(916) 574-1800 FAX (916) 574-1810  
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February 1, 2012

File Ref: SCH # 2010122028

RECEIVED  
CALIFORNIA STATE LANDS COMMISSION  
FEBRUARY 2 PM 1:33  
Terry Macaulay  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

**Subject: Draft Program Environmental Impact Report (PEIR) for the Delta Plan**

Dear Ms. Macaulay,

The California State Lands Commission (CSLC) staff has reviewed the subject draft PEIR for the proposed Delta Plan (Plan or Project), which is being prepared by the Delta Stewardship Council (Council) as the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The CSLC will act as a trustee agency because of its trust responsibility for projects that could directly or indirectly affect sovereign lands, their accompanying Public Trust resources or uses, and the public easement in navigable waters. Additionally, because the Project could involve use of or activities on sovereign lands, the CSLC may act as a responsible agency.

ST50-1

### CSLC Jurisdiction and Public Trust Lands

The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6301, 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the Common Law Public Trust.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line (MHTL), except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway landward to the ordinary low water mark and a Public Trust easement landward to the ordinary high water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

ST50-2

## Response to comment ST50-1

As noted in Appendix F, Notice of Preparation, of the Draft Program EIR, California State Lands Commission is a trustee agency and may be a responsible agency for implementation of the Delta Plan.

## Response to comment ST50-2

Comment noted.

After preliminary review of the information and maps provided in the draft PEIR, CSLC staff finds that there are numerous rivers, streams, sloughs and other areas within the proposed Plan area in which the State of California has ownership or an interest and which are under the jurisdiction of the CSLC. This ownership and interest ranges from fee ownership, which would require a lease for any project located on sovereign land, to reserved mineral rights, a public trust easement for trust uses, and rights for public navigation.

Due to the program-level review of the Project, CSLC staff is currently unable to determine the extent of sovereign ownership or jurisdictional interest of the CSLC in the Project area. We request that as the Project proceeds, the Council submit additional information (e.g., detailed maps) to enable CSLC staff to determine if any components of the Project will require a lease or permit. We additionally request to be placed on any future distribution mailing list for the Project.

This conclusion is without prejudice to any future assertion of State ownership or public rights, should circumstances change, or should additional information become available. This letter is not intended, nor should it be construed as a waiver or limitation of any right, title, or interest of the State of California in any lands under its jurisdiction.

#### **Project Description and Area**

The Project is the development of a comprehensive, long-term management plan for the Sacramento-San Joaquin Delta and the Suisun Marsh (Delta). The Project area includes the Delta, the Delta watershed that contributes water to the Delta, and areas outside of the Delta that use Delta water. The Plan is designed to achieve the following coequal goals established by the Delta Reform Act of 2009<sup>1</sup> (Delta Act):

- 1) Providing a more reliable water supply for California, and
- 2) Protecting, restoring and enhancing the Delta ecosystem in a manner that protects and enhances the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place.

The Plan is a suite of 12 regulatory policies (binding on covered actions<sup>2</sup>) and 61 non-binding recommendations organized into categories or elements. These elements and examples of the types of physical actions/individual project types that could occur in each element are listed below.

- **Reliable Water Supply:** New or expended reservoirs, groundwater production facilities (wells and pipelines), ocean desalination facilities, and recycled water facilities.
- **Delta Ecosystem Restoration:** Invasive species management (e.g., vegetation removal), and restoration/creation of floodplains, riparian areas, and tidal marsh

<sup>1</sup> In November 2009, the California Legislature enacted SBX7 1, which took effect on February 3, 2010. One portion of this legislation is known as the Sacramento-San Joaquin Delta Reform Act of 2009.

<sup>2</sup> The term "covered action" is defined in the Delta Act and generally refers to those actions that 1) occur in whole or in part in the Delta, and 2) could significantly impact the Delta ecosystem or water supply reliability.

### ***Response to comment ST50-3***

As described in Section 2B of the Draft Program EIR, the Delta Stewardship Council does not propose or contemplate directly authorizing construction or operation of any physical activities. Rather, through the Delta Plan, the Delta Stewardship Council seeks to influence the actions, activities, and/or projects of other agencies – the details of which are under the jurisdiction and authority of the individual agencies that will propose them in the future. Without specific details of future projects, it is not possible to develop specific determinations of the effects of future projects within lands under the jurisdiction of the State Lands Commission. Please refer to Master Response 2. The individual agencies that undertake future projects will be responsible for the environmental review of these projects, for determining covered action consistency, and for determining the existence and extent of State Lands Commission jurisdiction over the relevant lands and activities.

### ***Response to comment ST50-4***

Comment noted.

- **Water Quality Improvement:** New or expanded water, wastewater, stormwater, and agricultural runoff treatment plants; new or expanded facilities to improve the quality of well water, such as wellhead treatment and new recharge and monitoring wells.
- **Flood Risk Reduction:** New setback levees; maintenance, repair and modification of existing levees; floodplain expansion; dredging
- **Protection and Enhancement of the Delta as an Evolving Place:** Construction of new or expanded parks, trails, marinas, bike lanes and wildlife enjoyment facilities; additional retail and restaurants in Delta legacy towns to support tourism.
- **Finance Plan Framework to Support Coequal Goals.**

The Plan also discusses and the draft PEIR includes analysis on four specific or "named" projects, including:

- North of 17 Delta Offstream Storage Investigation;
- Los Vaqueros Reservoir Project - Phase 2;
- Upper San Joaquin 18 River Basin Storage Investigation Plan; and
- Update of the Department of Water Resources 19 (DWR) Bulletin 118 California's Groundwater (DWR 2003).

#### **Environmental Review**

CSLC staff offers the following comments on the draft PEIR:

1. **Physical Actions Resulting from the Plan:** The draft PEIR identifies examples of the types of physical actions and individual project types that could occur as a result of the Plan. Many of these physical actions are the type of projects that would directly or indirectly affect sovereign lands, their accompanying Public Trust resources or uses, and the public easement in navigable waters. For example:
  - invasive species management;
  - restoration/creation of floodplains, riparian areas, and tidal marsh;
  - maintenance, repair and modification of existing levees;
  - floodplain expansion;
  - construction of new or expanded parks and trails.

Other actions leading to physical changes in the environment could temporarily or permanently affect the availability of fuel and non-fuel mineral resources under the jurisdiction of the CSLC (e.g., natural gas, sand, aggregate).

Additionally, some examples of physical actions that could occur as a result of the Plan often require the issuance of a lease from the CSLC (e.g., ocean desalination facilities, dredging activities, construction of new or expanded marinas). The PEIR should emphasize that project specific activities requiring discretionary action by responsible agencies (such as the CSLC) will very likely require supplemental environmental review. It would also be helpful if the executive summary contained a section with a general overview of the subsequent environmental review process.

## ***Response to comment ST50-5***

The State Lands Commission policies are discussed on pages D-25 and D-153 of the Draft Program EIR.

As described in subsection, 1.4, Overview of the Delta Plan Environmental Impact Report, of the Draft Program EIR, the Delta Plan Program EIR is a program-level EIR due to the broad, program level of the Delta Plan. Future environmental documents would be completed by other agencies when they propose to implement projects that are subject to consistency reviews by the Council, or projects which are encouraged or otherwise influenced by the Delta Plan. Hence, this program EIR is not intended to provide project-level clearance for any specific project.

The EIR discusses the need for further environmental review of future projects. For example, page 21-11 of the Recirculated Draft PEIR explains what will be required to analyze the impact for climate change on ecosystem restoration projects under the Delta Plan: "Project-level impacts would be addressed in future site-specific environmental analysis conducted at the time such projects are proposed by lead agencies, and these analyses will include more information on impacts resulting from climate change and sea level rise. During the project-level analyses, these impacts will be identified by hydrology and hydraulic studies and ecological surveys, because they depend on various site-specific factors and on the specific location of the site along surface water bodies."

Delta Plan Policy G P1 describes the responsibilities of a State or local public agency with regard to covered actions, including compliance with all applicable laws listed in the policy.

ST50-5

referencing that individual activities proposed by other agencies will need to be evaluated in site-specific environmental documents.

- 2. **Mineral Resources:** The CSLC supports the proposed Project's efforts to protect, restore and enhance the Delta ecosystem and its associated Public Trust resources. However, the Delta and Suisun Marsh also contain State lands for which the CSLC has issued many leases for mining and/or within which the CSLC has reserved mineral interests. For example, Section 13 (Mineral Resources) states that:

"restoration of tidal marsh in the Delta or Suisun Marsh and other construction projects, if sited in areas with active gas extraction wells or mining operations, could potentially temporarily or permanently affect availability of mineral resource extraction sites due to use conflicts and/or access problems. Impacts due to siting of projects encouraged by the Delta Plan on or near mineral resource extraction sites generally can be mitigated to less-than significant levels except in cases of new inundation of large areas that contain such sites" (p. 13-1).

ST50-6

CSLC staff is concerned that the PEIR does not, and cannot at this time, present sufficient evidence in support of its conclusion of "less-than significant" for impacts from covered actions to mineral resources that would be of value to the region and residents of the State. The PEIR states "Because of the uncertainties underlying this program-level assessment, project impacts related to loss of availability of locally important resource recovery sites cannot be accurately quantified" (p. 13-10). Despite perspective on the significance of impacts provided by comparisons to other projects recently evaluated under CEQA, the analysis underlying the general expectation of impacts being mitigated to a "less-than significant" level is speculative and contains assumptions and generalizations that cannot conclusively be relied upon. CSLC staff suggests that this impact remain significant and unavoidable.

- 3. **Cultural Resources:**

- a. Section 10.2, Regulatory Framework, p. 10-1 and App. D, Sec. 8.2, State Regulatory Framework, p. D-100. The draft PEIR should mention that the title to all abandoned shipwrecks, archaeological sites, and historic or cultural resources on or in the sovereign lands of California is vested in the State and under the jurisdiction of the CSLC. The CSLC administers the Shipwreck and Historic Maritime Resources Program that consists of the CSLC's activities pursuant to California Public Resources Code sections 6309, 6313, and 6314.
- b. Section 10.3.1, Major Sources of Information, p. 10-2. It does not appear that the CSLC Shipwrecks Database was consulted. When any project-specific areas can be identified, a request should be submitted to CSLC staff to check the Shipwrecks Database and other CSLC files for information on potential shipwrecks in the project area. Some areas of the Delta have been surveyed for submerged cultural resources using remote sensing techniques such as sidescan sonar and magnetometer. Areas that have not been surveyed would need to be investigated using appropriate archaeological methods for locating submerged cultural resources.

ST50-7

ST50-8

### Response to comment ST50-6

The Recirculated Draft PEIR's conclusion regarding impacts to mineral resources is as follows:

"Impacts from projects encouraged by the Revised Project would be addressed in future site-specific environmental analysis conducted at the time such projects are proposed by lead agencies. It is likely that project construction and operation under the Revised Project, would have less than significant impacts on locally important mineral resource recovery sites because lead agencies would consider locations of mineral resource recovery sites in their decision making process in order to ensure continued ability to extract minerals in these areas. Because the details of many of the aspects of specific actions encouraged by the Revised Project are not currently known, it is not possible to determine if future projects would cause impacts to locally important mineral resource recovery sites. Therefore, for the purpose of this program-level assessment, impacts related to locally important mineral resource recovery sites due to one or more of the actions encouraged by the Revised Project could be **significant.**"

Thus, while the EIR states its expectation, based on its analysis of the project, that impacts will not be significant, it ultimately determines that they should be considered significant. The summary of impacts in Table ES-1 reflects this conclusion.

### Response to comment ST50-7

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### Response to comment ST50-8

In response to this comment, please see text change(s) in Section 5 of this FEIR.

- c. Section 10.3.2.3, Historical Setting, p. 10-7. The importance of maritime trade and commerce between inland areas and the San Francisco Bay area facilitated by the Delta's waterways should be discussed in more detail. This information would provide the historical context for much of the Settlement and Development sections. For example, early steamboats carried miners and supplies to the jumping-off places to the goldfields. Scow schooners like the *Alma*, now at the San Francisco Maritime National Historical Park, carried hay and agricultural products from inland farming areas to Bay area markets. Additionally, large riverboat steamers like the *Delta Queen*, now permanently berthed in Sacramento, plied Delta waters for decades ferrying passengers and cargo in the era before highways and bridges crisscrossed the Delta. Many small ferries, like the recently documented Clarksburg ferry, provided important local access between settlements and farming areas throughout the Delta. ST50-9
- d. Section 10.3.2.4, Known Cultural Resources, p. 10-17. There are many known shipwrecks in the Delta starting with the Gold rush era and probably dozens of others yet to be discovered. There are also historic landings and other maritime-related cultural resources throughout the Delta. ST50-10
- e. Section 4.1.1, Records Search, p. 10-22. As indicated above, the CSLC maintains a Shipwrecks Database and other files on shipwrecks. Please consult CSLC staff to obtain further information on shipwrecks in the Delta. ST50-11
- f. Section 4.1.2, Resource Types, p. 10-23. Please add shipwrecks to the list of resource types. ST50-12
- g. Section 10.4.3.1.1, Impact 10-1a Disturbance or Destruction of Prehistoric and Historic-Era Archaeological Resources, p. 10-25, line 42. Historic shipwrecks are not limited to the mid-19<sup>th</sup> century. Under California state law, any vessel submerged on State lands for more than 50 years is presumed to be archaeologically or historically significant (Pub. Resources Code, § 6313(c).) ST50-13
- h. Section 10.4.3.6.1, Mitigation Measure 10-1, p. 10-46. Investigations to identify submerged cultural resources should be conducted before any ground-disturbing activities begin. These investigations may include remote sensing surveys and should be conducted by a qualified maritime archaeologist. If avoidance of significant submerged cultural resources is not feasible, a permit from the CSLC may be necessary to conduct resource documentation and possible salvage of important artifacts or components of the vessel. A mitigation measure to cover unanticipated submerged cultural resource discoveries is recommended. Specific mitigation measures developed to address any cultural resources that may be affected by the proposed Project and any unanticipated discoveries during the Project's construction activities should include consultation with CSLC staff. ST50-14
4. Program Environmental Review and Mitigation: Due to nature of the Plan, the Project is being proposed as a "Program" rather than a "Project-level" EIR. However, it is unclear to CSLC staff which Project activities and associated mitigation measures) are being analyzed in sufficient detail to be covered under the PEIR. The PEIR should make an effort to distinguish between activities covered under the PEIR (without the need for additional project specific environmental review), and activities ST50-15

### ***Response to comment ST50-9***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### ***Response to comment ST50-10***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### ***Response to comment ST50-11***

Please refer to response to comment ST50-8.

### ***Response to comment ST50-12***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### ***Response to comment ST50-13***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### ***Response to comment ST50-14***

In response to this comment, please see text change(s) in Section 5 of the FEIR.

### ***Response to comment ST50-15***

Please refer to Master Response 2.

that will trigger the need for additional environmental analysis (see State CEQA Guidelines<sup>3</sup> §15168, subd. (c)). In order to avoid the improper deferral of mitigation, a common flaw in program-level environmental documents, mitigation measures should either be presented as specific, feasible, enforceable obligations, or should be presented as formulas containing "performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way" (State CEQA Guidelines §15126.4, subd. (a)(1)(B)).

Prior to final action on the PEIR, the Council should provide a mitigation monitoring program pursuant to State CEQA Guidelines section 15074, subdivision (d). The monitoring program should include timing for implementation of mitigation measures and list all agencies, in addition to the Council, responsible for ensuring compliance and enforcement through permit conditions, agreements or other measures during the life of the Project.

Thank you for the opportunity to comment on the draft PEIR for the Project. As a trustee and, potentially, responsible agency, the CSLC may need to rely on the final PEIR for the issuance of any new lease as specified above and, therefore, we request that you consider our comments prior to adoption of the PEIR.

For questions concerning CSLC leasing jurisdiction, please contact Mary Hays, Public Land Manager, at (916) 574-1812, or via email at [Mary.Hays@slc.ca.gov](mailto:Mary.Hays@slc.ca.gov). For questions concerning archaeological or historic resources under CSLC jurisdiction, please contact Senior Staff Counsel Pam Griggs at (916) 574-1854 or via email at [Pamela.Griggs@slc.ca.gov](mailto:Pamela.Griggs@slc.ca.gov). For questions concerning CSLC reserved mineral interests, please contact Greg Pelka, Senior Mineral Resources Engineer, at (562) 590-5227, or via email at [Greg.Pelka@slc.ca.gov](mailto:Greg.Pelka@slc.ca.gov). Please send electronic copies of future Project-related documents or refer questions concerning environmental review to Jennifer Deleon, Environmental Program Manager, at (916) 574-0748 or via e-mail at [Jennifer.Deleon@slc.ca.gov](mailto:Jennifer.Deleon@slc.ca.gov).

Sincerely,



Cy R. Oggins, Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
M. Hays, LMD, CSLC  
J. Deleon, DEPM, CSLC  
P. Griggs, Legal, CSLC  
E. Milstein, Legal, CSLC  
G. Pelka, MRMD, CSLC

<sup>3</sup> The State CEQA Guidelines are found in Title 14 of the California Code of Regulations, commencing with section 15000.

## Response to comment ST50-16

Comment noted.

ST51 DFG

Response to comment ST51-1  
Comment noted.



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND GAME  
1416 9<sup>th</sup> Street  
Sacramento, CA 95814  
[www.dfg.ca.gov](http://www.dfg.ca.gov)

EDMUND G. BROWN, Jr., Governor  
CHARLTON H. BONHAM, Director



*February 6,*  
January 27, 2012

Joe Grindstaff  
Executive Officer  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

Subject: Submission of Comments on the Draft Delta Plan Program Environmental Impact Report

Dear Mr. Grindstaff:

The Department of Fish and Game (DFG) appreciates the opportunity to review and comment on the Delta Stewardship Council's Draft Delta Plan Program Environmental Impact Report (DEIR).

DFG recognizes the profound challenges associated with managing the Delta to achieve the co-equal goals of ecosystem protection and water supply reliability as mandated by the Sacramento-San Joaquin Delta Reform Act of 2009. DFG appreciates the tremendous commitment of resources you and your staff have put into developing this important plan and the associated environmental document. We look forward to being a vital partner throughout this important and challenging process.

Our comments are included in the attached table. If you have any questions or require clarification, please contact Dr. David S. Zezulak at (916) 445-3960, or email him at [dzezulak@dfg.ca.gov](mailto:dzezulak@dfg.ca.gov). Thank you for considering our comments.

Sincerely,

Charlton H. Bonham  
Director

Enclosure

cc: Department of Fish and Game

Sandra Morey, Deputy Director  
Ecosystem Conservation Division  
1416 Ninth Street, Ste. 1208  
Sacramento, CA 95814  
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*Conserving California's Wildlife Since 1870*

Feb 6  
Joe Grindstaff, Executive Officer  
Delta Stewardship Council  
January 27, 2012  
Page 2

Scott Cantrell, Acting Chief  
David S. Zazulak, Ph.D.  
Ecosystem Restoration Program Manager  
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*No comments*

- n/a -

Section	Page	Line(s)	Comment	
general			An general comment made by the Department staff and other agencies (DFG/USFWS Letter to DSC, 9-29-2011) is the need to clarify the process for making consistency determinations on covered actions when it involves authorized and permitted HCPs/NCCPs with the consistency determinations and definition of "covered action" called for in the Delta Plan. The process to integrate existing local, state, and federal programs into the Delta Plan is an important issue to be resolved.	ST51-2
general			The analysis of alternatives is necessarily a programmatic level qualitative analysis; however, we recommend that you try to quantify the magnitude of differences between Alternatives and the Proposed Project.	ST51-3
general			Section 5 discusses Emergency Planning. There is extensive discussion that addresses all the required mandates for each of the responsible entities however, it is not clear how this strategy would be implemented.	ST51-4
general			Double-check all references for most recent citations. Include more recent pertinent documents, such as the Hill Slough EIR.	ST51-5
general			We recommend you incorporate recent information that is being developed for the San Francisco Estuary Institute Historical Ecology Study for the Sacramento-San Joaquin Delta ( <a href="http://www.sfei.org/he">www.sfei.org/he</a> ). This information would be useful for Section 4 and Appendix F.	ST51-6
2A	25	13	CDFG Stage Two Actions for Invasive Species is part of the Draft ERP Conservation Strategy and is incorporated as ER-R6 of the Delta Plan.	ST51-7
2A	34	2-5	From the ERP-CS re: Cache Slough restoration. "Restore a mosaic of deep open water, shallow subtidal, tidal marsh, riparian, perennial grasslands, and vernal pool habitats." Add: "deep open water, shallow subtidal, perennial grasslands, and vernal pool habitats" to text.	ST51-8
2A	34	19-22	The ERP-CS recommends creating a mosaic of seasonal floodplain, riparian, shallow subtidal, and tidal marsh areas at the Consummes-Mokelumne Confluence. Add: "shallow subtidal" to text.	ST51-9
2A	34	42-45	The ERP-CS re: Lower San Joaquin restoration. "Create a mosaic of seasonal floodplain, riparian, shallow subtidal, and tidal marsh areas." Add: "seasonal floodplain and shallow subtidal areas" to text.	ST51-10

### ***Response to comment ST51-2***

This is a comment on the project, not on the EIR.

### ***Response to comment ST51-3***

Please refer to Master Response 3.

### ***Response to comment ST51-4***

As described in the response to comment ST51-3, the Delta Stewardship Council seeks to influence the actions, activities, and/or projects of other agencies – the details of which are under the jurisdiction and authority of the individual agencies that will propose them in the future. The Delta Plan's degree of influence on future undefined projects is unclear. Accordingly, a detailed discussion for how other agencies will implement emergency plans in the future is inappropriately speculative at this time.

### ***Response to comment ST51-5***

The references represent the documents used during preparation of the Draft Program EIR. In some instances a final version of an environmental document has since been completed, but the final version only adds documentation of errata. Therefore, the draft documents cited were reviewed to understand the details of their environmental analysis and were included in the reference lists.

### ***Response to comment ST51-6***

Comment noted. However, the preparers of the Draft Program EIR believe that the documents used during preparation of the Draft Program EIR provide an adequate description of historical conditions for this programmatic document. Therefore, no change has been made to the EIR.

### ***Response to comment ST51-7***

Comment noted. The projects listed in the paragraph on page 2A-25, lines 7 through 14, are included in the Proposed Project (Fifth Staff Draft Delta Plan).

### ***Response to comment ST51-8***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST51-9***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST51-10***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

2A	35	12-16	The ERP-CS does not include a discussion of Suisun Marsh. A better reference is the Suisun Marsh Habitat Management, Preservation, and Restoration Plan Final EIS/EIR, which concentrates on tidal marsh and managed marsh. DFG finalized and certified the Suisun Marsh EIR in December 2011.	ST51-11
2A	35	36-39	The ERP-CS re: Yolo Bypass restoration. "Restore a mosaic of seasonal floodplain, riparian, perennial grasslands, and vernal pool habitats." Add: "riparian, perennial grasslands, and vernal pool habitats" to the text.	ST51-12
2A	39	35	Regarding the language, "change limit", use one word or the other, not both.	ST51-13
3	6	19	The term "conjunctive management" is first referred to in this sentence but it is not defined until page 3-35. Move the definition and discussion of this concept up in the document to define it first before using it again.	ST51-14
3	18	15	The term "runoff" is used in a very general sense throughout this section. The type of runoff makes a difference in the development of resource management strategies.	ST51-15
3	24	16	Correct typographical error: the name of the Irrigation District is Modesto, not Madera.	ST51-16
3	25	21	The geographic scope of the Surface Water Quality section (3.3.4.2.2) differs from the preceding Surface Water Hydrology section (3.3.4.2.1). The water quality section leaves out the Stanislaus, Tuolumne, and Merced rivers. The US EPA added the lower portions of these three rivers to the list of impaired water bodies that will require a TMDL for temperature under the CWA 303(d) list as of November 2011. Add at least a brief mention of these three tributaries and their temperature issues in the water quality section.	ST51-17
3	36	1	This section should mention the Old Tulare Basin restoration efforts currently in progress (Tulare Basin Wildlife Partners/Tulare Basin Regional Conservation Plan).	ST51-18
3	77	11,26	It is unclear why this impact is described as limited to water supply availability to water users OUTSIDE the Delta watershed. Later in the document, the analysis addresses potential impacts to water supply for Users within and outside the Delta (Sections 3.4.3.2.3, page 3-84). We recommend more inclusive wording for this impact. It is also unclear why	ST51-19

### Response to comment ST51-11

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### Response to comment ST51-12

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### Response to comment ST51-13

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### Response to comment ST51-14

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### Response to comment ST51-15

It is recognized that water quality associated with runoff from different types of land uses is different. However, for the purposes of this programmatic EIR, the impact analysis does not address specific differences in runoff quality. That level of detail would be inappropriately speculative at this time, prior to the availability of project-specific data and conduct of project-specific analyses.

### Response to comment ST51-16

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### Response to comment ST51-17

The description of water quality in this portion of Section 3 on page 3-25, line 21, is presented in more detail in Appendix E of the Draft Program EIR.

### Response to comment ST51-18

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### ***Response to comment ST51-19***

The threshold of significance related to water supplies for areas located outside of the Delta that use Delta water is important because Proposed Project and the alternatives could affect availability and reliability of SWP and CVP water supplies that are conveyed through the Delta. Please refer to Master Response 1. Reliable water supply facilities encouraged by the Proposed Project and alternatives could include reservoirs with hydroelectric generation facilities. Because the Draft Program EIR was prepared with a conservative approach that includes many actions that could be encouraged by the Delta Plan, it evaluates potential construction and operation impacts associated with facilities that generate hydropower as part of its analysis of facilities that could improve water supply.

			hydroelectric facilities are included in a list of projects that could improve water supply reliability. It is the three features listed in line 25 that could improve reliability of water supply. Hydroelectric power is definitely a beneficial use and is non-consumptive. It does not "hurt" the water supply but neither does it "help" water supply reliability, unless the consideration here is that the generated power could be used to move water through conveyance facilities?	ST51-19
3	79	20-28	Adequate mitigation for "temporary" changes in flow and water quality constituents in the Delta tributaries will need to include a timing component. The end of the paragraph notes water transfers will achieve mitigation during "drier" periods (line 28). We recommend adding "warmer" periods as well, and perhaps "vulnerable life history stages for aquatic resources." As background, migration of adult salmon as well as subsequent egg viability can be affected if adults returning to spawn in tributaries are exposed to excessive water temperatures, meaning even a temporary increase in temperature could be a significant impact if it occurs during a critical life history stage. If the water transfer occurs at the wrong time (e.g. too late), this does not equal "mitigation." There is a temporal component to the impact for which the mitigation may not be linked in time.	ST51-21
3	86	3	Note on page 86, line 3, conveyance facilities=pipelines and pumping plants. We recommend either clarify the conveyance role of hydroelectric power or drop it from the list of examples.	ST51-21
3	88	15-29	This comment also applies to Section 5, Preservation, restoration of wetlands (including maintaining functionality) should be included as a Flood Risk Reduction Measure. Also, it must be acknowledged that dredging spoils placed along the Delta act as sources and spread for nonnative and sometimes noxious plants. Weed-management of spoil piles in the Delta should be included as a mitigation measure for dredging and maintenance.	ST51-22
3	101	28	We recommend adding the following reference: U.S. Environmental Protection Agency, 2011, Transmittal of Final List of Water Bodies Added by the EPA to California's 2009-2010 List of Water Quality Limited Segments Pursuant to Clean Water Act 303(d), Region 9 Water Division, San Francisco, CA 35 pp. Also see the following link to the State Water	ST51-23

### ***Response to comment ST51-20***

The sentence referred to in this comment on page 3-79, line 28, of the Draft Program EIR is based upon information presented in the Lower Yuba River Accord EIR. Therefore, the sentence was not modified.

### ***Response to comment ST51-21***

The line referred to in this comment on page 3-86, line 3, of the Draft Program EIR, includes facilities that could be encouraged to be constructed and operated to improve water quality in the Delta and does not include hydroelectric facilities.

### ***Response to comment ST51-22***

The term "floodplain expansion" on page 3-88, line 23, of the Draft Program EIR, includes expansion and restoration of wetlands as described on page 2A-50, lines 18-23, of the Draft Program EIR. Actions encouraged by the Delta Plan include operation and maintenance activities.

### ***Response to comment ST51-23***

The references identified in this comment have been added to page 3-111, line 25, and page 3-112, line 1, of the Draft Program EIR.

			Resources Control Board's website pertaining to the 2010 Integrated Report (Clean Water Act Section 303(d) List / 305(b) Report). <a href="http://www.swrcb.ca.gov/water_issues/programs/lmdl/integrated2010.shtml">http://www.swrcb.ca.gov/water_issues/programs/lmdl/integrated2010.shtml</a>	ST51-23
4	7	9-15	The list/impacts of nonnative, invasive, exotic, and noxious plants in the Delta are far more extensive than what is discussed in this section.	ST51-24
4	10	19-32	Newer papers on sea level rise in the SF Bay Delta should be examined and cited: Straiberg, D., M. Brennan, J.C. Callaway, J.K. Wood, L.M. Schile, D. Jongsomjit, M. Kelly, V.T. Parker, and S. Crooks. 2011. Prospects for tidal marsh sustainability in San Francisco Bay. Spatial habitat scenarios and sensitivity analysis. PLoS ONE 6 (11): e27388.	ST51-25
4	10	33	"In addition, modeling scenarios predict an increase in California's air. Correct or delete this sentence.	ST51-26
4	16	12-13	Regarding the statement, "fish that spawn and rear in fresh water": this is an incorrect definition for anadromous fish. We suggest you use the description from: Murphy, B. R., and D. W. Willis, editors. 1996. Fisheries techniques, 2nd edition. American Fisheries Society, Bethesda, Maryland.  Glossary, page 688 Anadromous fishes: Fishes that migrate between marine habitats, where they do most of their growing, and freshwater habitats, where they breed.	ST51-27
4	16	13	Add a closing parenthesis after the word "water" in definition of anadromous.	ST51-28
4	17	13-14	Revise the text as: Chinook salmon pass through the Delta as juveniles emigrating to the ocean from the Sacramento and San Joaquin rivers and tributaries where they were born, and again as adults on their return migration to their natal streams to spawn. Juvenile salmon use the Delta, Suisun Marsh, and the Yolo Bypass (when flooded) for rearing to varying degrees, depending on their life stage, size, river flows, and time of year.	ST51-29
4	17	24	Add: water temperature, instream flow degradation, elimination of	ST51-30

### ***Response to comment ST51-24***

Comment noted. This section on Harmful Invasive Species is intended to be a general overview.

### ***Response to comment ST51-25***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### ***Response to comment ST51-26***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### ***Response to comment ST51-27***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### ***Response to comment ST51-28***

Please refer to response to comment ST51-27.

### ***Response to comment ST51-29***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### ***Response to comment ST51-30***

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance. Issues related to water temperature, instream flow degradation, and elimination of spawning gravel recruitment below dams are already included in the terms "loss and degradation of habitat available for spawning and juvenile rearing" and "other adverse effects from CVP/SWP operations." The issue of poaching is addressed in the "illegal harvest" term.

			spawning gravel recruitment below dams, fish passage issues, and poaching in the list of continued threats.	
4	18	13	The date needs to be corrected. It is March 30, 2012 (see <a href="http://www.fws.gov/sfbaydelta/species/longfin_smelt.cfm">http://www.fws.gov/sfbaydelta/species/longfin_smelt.cfm</a> )	ST51-31
4	21	1	Mention that the California black rail is abundant in the brackish tidal marshes in Suisun Bay.	ST51-32
4	21	29	The California clapper rail is also a fully protected species.	ST51-33
4	22	13	Re: least tern, add that there have been breeding colonies documented in Suisun Marsh, near Montezuma Slough.	ST51-34
4	23	39	Re: LSA 2007 Report, bulrush and saltgrass are increasing in salt marshes due to changes in salinity. Harvest mice in Suisun Bay, a brackish marsh, are found in higher densities in mixed vegetation, pickleweed plus bulrush and saltgrass. Ref: Sustaita, D., P.F. Quickait, L. Patterson, L. Barthman-Thompson, S. Estrella. 2011. Salt marsh harvest mouse demography and habitat use in the Suisun Marsh, California. The Journal of Wildlife Management 75: 1498-1507.	ST51-35
4	26	22-41	This list of natural communities does not match the plant community types discussed later in the text (agriculture, developed/disturbed, invasive plants, nonnative grasslands/nonnative herbs, native grassland, inland dune scrub, etc.). We also suggest you include a cross-walk to BDCP natural communities.	ST51-36
4	67	37	DFG's Stage 2 should probably be referred to as ERP's Stage 2 actions throughout the document.	ST51-37
4	68	34-36	The Regional Advance Mitigation Planning (RAMP) process, which is part of the Conservation Framework for the CVFPP, is proposing to implement restoration projects in advance of impacts to reduce temporal losses of habitat. The DEIR should include mention of this process and this type of "advance mitigation", especially for riparian forest habitats that will take decades to restore.	ST51-38
4	71	21	As additional information for the DEIR, the California Essential Habitat Connectivity Project identifies areas of essential wildlife corridors and habitat linkages. It can serve also as a conservation planning tool for larger planning efforts such as the Delta Plan/DSC program.	ST51-39
4	76	29-30	The CVFPP also discusses the creation of a new floodplain in this location	

**Response to comment ST51-31**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment ST51-32**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment ST51-33**

In response to this comment, please see text change(s) in Section 5 in this FEIR.

**Response to comment ST51-34**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment ST51-35**

Comment noted, but the text on page 4-23, line 39 of the Draft Program EIR was not modified. The existing text includes results of the review of the report cited in the comment.

**Response to comment ST51-36**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment ST51-37**

Comment noted. The Fifth Staff Draft Delta Plan refers to this document with a reference to DFG and other agencies. Therefore, the text on page 4-67, line 37 of the Draft Program EIR was not modified.

**Response to comment ST51-38**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment ST51-39**

This is a comment on the project, not on the EIR.

### ***Response to comment ST51-40***

Integration of restoration plans encouraged by the Delta Stewardship Council and restoration plans developed by other agencies, including DWR, in the Yolo Bypass, Delta, and Suisun Marsh are discussed in Section 2A of the Draft Program EIR under the definition of the Proposed Project and the alternatives. Therefore, no change has been made to the text on page 4-76, lines 29 and 30 referred to in this comment.

			which should be described.	
4	84	1-2	See comment for page 68. This comment also applies to this portion of the document.	ST51-41
4	85	33-34	See comment for page 71. This comment also applies to this portion of the document.	ST51-42
4	145	Table 4-2	Bryant's Savannah Sparrow ( <i>Passerculus sandwichensis alaudinus</i> ) is known to occur in Suisun Marsh. It was recently added to the CDFG Species of Special Concern list (Shuford and Gardali 2008). It needs to be considered by the DEIR. The species nests along the tidal marsh/upland ecotone and could be affected by activities along the marsh edge. In addition, more attention needs to be paid to preserve and restore this band of habitat for high tide refuge for other tidal marsh species. At present, geographic boundaries of this subspecies are not clear but according to the cited reference, the current known range includes Solano County.	ST51-43
5	21	1	Line 1 suggests that organic soils are more stable for levee building than plain clay sands. Please include citations as evidence.	ST51-44
23	1	8	We recommend after NCCP "intended to provide for the conservation and management of covered species." This more accurately conveys the NCCP standard.	ST51-45
23	1	14-17	We recommend including language that recognizes that the BDCP development process is a collaborative effort that also includes non-governmental organizations, and state and federal agencies.	ST51-46
23	1	25	The NCCP will also provide "take" coverage for species listed under the California Endangered Species Act (Fish and Game Code section 2050 et seq.).	ST51-47
23	3	29	We recommend replacing the current language with the actual language of the Water Code: "If DFG approves the BDCP as a NCCP pursuant to NCCPA.	ST51-48
23	5	22	We recommend after "developed to", add the sentence: "provide for the conservation and management of covered species." This more accurately conveys the NCCP standard.	ST51-49
23	5	33	The BDCP is not being developed with the intent to meet the CESA standard.	ST51-50
23	5	35-36	Distinguish between application for a NCCP take permit and other	

### **Response to comment ST51-41**

Please see response to comment ST51-38.

### **Response to comment ST51-42**

Please see response to comment ST51-39.

### **Response to comment ST51-43**

In response to this comment, please see text change(s) in Section 5 in this FEIR.

### **Response to comment ST51-44**

The sentence on page 5-21, line 1, of the Draft Program EIR referred to in this comment is describing the fact that the peat soils would not have as great a potential to liquefy as sandy and silty soils, not that the peat soils would be more stable for levee building.

### **Response to comment ST51-45**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

### **Response to comment ST51-46**

Section 23 provides a brief description of the Bay Delta Conservation Plan, including a list of applicants for the Habitat Conservation Plan (HCP) and Natural Community Conservation Plan (NCCP). Due to the brief nature of this description, details of the process that was implemented to develop the HCP and NCCP were not described in Section 23, including the use of a Steering Committee and other outreach methods to provide collaboration with other agencies and non-governmental organizations.

### **Response to comment ST51-47**

The term "take coverage" under the California Endangered Species Act is addressed on page 23-5 of the Draft Program EIR.

### **Response to comment ST51-48**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

***Response to comment ST51-49***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST51-50***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

***Response to comment ST51-51***

In response to this comment, please see text change(s) in Section 5 in this FEIR.

			processes, such as that required to obtain a CESA incidental take permit. Non-listed species are not authorized for take under CESA.	ST51-51
23	5	36	The definitions of "endangered, threatened, rare, etc." differ for each kind of protected species regulation. They are not the same for the state and federal Endangered Species acts. As an example, note footnote #7; the definition of "take" is that of the federal ESA, not CESA. CESA has a more limited take definition (Fish and Game Code Section 87). It is important to clearly distinguish the types of regulations and definitions between the various regulations. There are differences. Use of the terminology in the DEIR should be precise.	ST51-53
23	16	31	We recommend clarifying why the Biological Opinion (BO) remnants are being referenced. The sentence needs to explain that the BO's contained modifications to project operations but have been remanded. Thus, some of the modifications are expected to change in the future.	ST51-53
23	25	12-14	The habitat credit agreement MOA has been finalized. We recommend modifying the proposed project to now encourage implementation.	ST51-54
23	29	21-24	The explanation for how the analysis in this chapter (as related to potential significant cumulative impacts involving BDCP) relates to the broader cumulative impacts chapter is unclear. This sentence suggests that this is a separate analysis yet it does not analyze whether the Delta Plan impacts (taken with the BDCP impacts) can be considered cumulatively significant. Is this analysis exclusively in the cumulative impacts section? If so, we recommend a better explanation regarding how this section fits in with the cumulative impacts section.	ST51-55
<b>APPENDICES</b>				
D			Include with each regulation type, the type of permits that may be required. Include most pertinent regulations for marine, riparian, wetland, and associated upland habitats. This ties into how the DSC intends to integrate the new program into these existing regulatory programs.	ST51-56
D	2.1.16.1	586	Delete the statement that the Conservation Strategy has evolved into the Delta Regional Ecosystem Restoration Implementation Plan. Also update the reference to the Draft Conservation Strategy for Restoration of the Sacramento-San Joaquin Delta Ecological Management Zone and Sacramento and San Joaquin Valley Regions (Draft CDFG 2011a).	ST51-57

**Response to comment ST51-52**

In response to this comment, please see text change(s) in Section 5 in this FEIR.

**Response to comment ST51-53**

In response to this comment, please see text change(s) in Section 5 in this FEIR.

**Response to comment ST51-54**

This is a comment on the project, not on the EIR.

**Response to comment ST51-55**

Please refer to Master Response 1.

**Response to comment ST51-56**

As described in Section 2B of the Draft Program EIR, the Delta Stewardship Council does not propose or contemplate directly authorizing construction or operation of any physical activities. Rather, through the Delta Plan, the Delta Stewardship Council seeks to influence the actions, activities, and/or projects of other agencies – the details of which are under the jurisdiction and authority of the individual agencies that will propose them in the future. The Delta Plan’s degree of influence on future undefined projects or permit programs is unclear. Accordingly, detailing specific types of permits that other agencies might require would be premature—and might involve inappropriate speculation—at this time.

**Response to comment ST51-57**

In response to this comment on page D-22, line 586, of the Draft Program EIR, the second and third sentences of this paragraph have been deleted and the reference to Delta Regional Ecosystem Restoration Implementation Plan and the citation has been updated to DFG (2011b). In addition, the full citation for the Draft Conservation Strategy has been added to the References section.

F		Tables	Usefulness of Tables of Flora and Fauna would be greatly increased by indicating native versus nonnative species.	ST51-58
F	F4-17	15	The last sentence of the paragraph on line 15 reads, "...listed under the federal and/or ESA and are described below." Insert "California" after and/or so it will read "...listed under the federal and/or California ESA and are described below."	ST51-59
F	F4-17	33-34	Provide the reference or list the "specifically named impassable dams."	ST51-60
F	F4-20	24	Change "predation on juvenile salmon..." to predation on juvenile salmonids..." because the paragraph is discussing both salmon and steelhead.	ST51-61
F	F4-20.21	35,39,9,17,24 (resp.)	Change "salmon" to "salmonids" for consistency.	ST51-62
F	F4-20.21	8	Section 1.2.4.1.4 Threats. There is no mention of insufficient instream flows as a threat to all life stages of salmonids in natal tributaries. Include a paragraph, with references, on the impacts of insufficient instream flows for salmonid migration, passage, spawning, rearing, and emigration.	ST51-63

**Response to comment ST51-58**

Comment noted.

**Response to comment ST51-59**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment ST51-60**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment ST51-61**

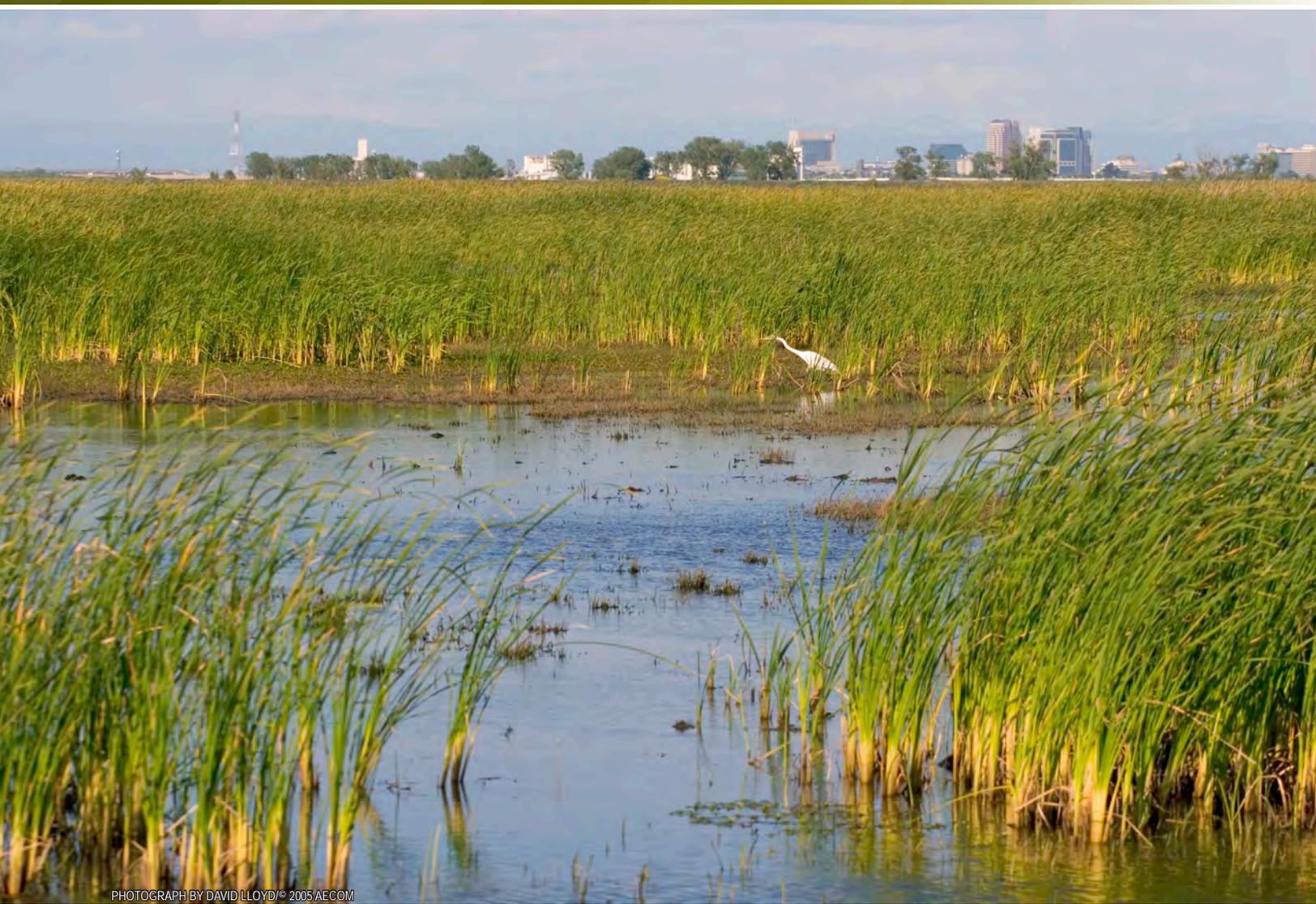
Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment ST51-62**

Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

**Response to comment ST51-63**

The issues associated with reduced stream flows are briefly described in the first paragraph in subsection 1.2.4.1.4 of Appendix F of the Draft Program EIR.



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**FINAL**

**Delta Plan Program Environmental Impact Report  
Volume 4, Binder 1 of 3: Introduction through Section 3, Responses to  
Comments on the Draft Program PEIR, State Agencies**

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