Response to comment LO185-1

Comment noted.

Response to comment LO185-2

This is a comment on the project, not on the EIR. Regarding the EIR’s approach to the analysis of the Delta Plan’s environmental impacts, please refer to Master Response 2.
Response to comment LO185-3
This is a comment on the project, not on the EIR.

Response to comment LO185-4
The EIR analyzes the significant adverse environmental effects of the Delta Plan’s policies and recommendations. CEQA does not require the EIR to consider the underlying problems that the Delta Reform Act and the Delta Plan address. This is a comment on the project, not on the EIR.
Response to comment LO185-5

Pursuant to CEQA Guidelines section 15125(a), the EIR compares the Delta Plan’s environmental effects to existing conditions at the time of the publication of the Notice of Preparation of this EIR in December 2010. As described in Section 3 of the Draft Program EIR, the existing conditions assume operations under criteria of SWRCB Decision 1641 and the current biological opinions issued by the U.S. Fish and Wildlife Service and National Marine Fisheries Service. Because of the programmatic nature of the analysis (please refer to Master Response 2), no specific quantitative analysis was conducted. Regarding the No Project Alternative, please refer to Master Response 1.
the DMC, and that some of their water might have come from the San Joaquin River.\(^2\) The Exchange Contractors are the highest priority users of the CVP system.

In addition, early in 2009, DWR and USBR Petitioned the SWRCB to temporarily relieve them of their obligation (under their permits) to meet Delta outflow objectives (for the protection of fish and wildlife beneficial uses). The petition claimed that DWR and USBR upstream supplies were insufficient to meet both Delta outflow and (later in the year) cold water requirements in the streams. The USBR biologists testified it was better to meet the cold water requirements than the outflow ones. Cross-examination indicated that those same biologists did not know if there was enough water to meet the cold water requirements even if the outflow objectives was suspended.

The hearing on the petition also showed that the exporters had increased export pumping when the outflow standard became effective, going from 2,000 cfs to 4,000 cfs. When they did this, the actual outflow was approximately 7,000 cfs instead of 11,400 cfs, the later being the standard at that time.\(^3\)

What this means is that after just two years of drought, the CVP and SWP were “bankrupt” in that they could not meet the minimum fishery requirements and could not supply the senior most export interest. This is a crisis which cannot be overstated. From this we see that current operations of the export projects are not geared to meet permit required minimum fishery protections over more than a two year period, and are certainly not operated to provide any water supply for other needs beyond that same period. This is the crisis facing the state; the crisis is not how to route water through the Delta.

Some have argued that limitations on exports due to fishery concerns precluded making sufficient deliveries to exporters, but we see from the 2007-2009 time frame that is not the case. If export water in storage could not be pumped due to fishery concerns, that water would have remained in storage and be available for export at some later time. Put another way, stored water would have been increased if restrictions on pumping were in place and not getting water to exporters. To the contrary, there was not enough water in the reservoirs due to fishery restrictions, there simply wasn’t enough water. Of course, any non-stored water that was in the system during this time and which was not exported was not “lost” exports, as the projects have no greater claim on such water that other senior uses of the environment.

\(^1\) This would result in less water available for the Friant users.

\(^2\) In response to an observation about the projects taking water in violation of permit conditions, a representative of the exporters recently stated “That’s not fair. 2009 was an emergency.” This of course proves the point, that there is insufficient water during some times to support current export needs/desires, and of course that they believe they should be able to export what they want notwithstanding the supply and other obligations.
Response to comment LO185-6

Regarding the EIR’s description of existing conditions, please refer to response to comment LO185-5. 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 were permitted and funded at the time of the Notice of Preparation of the EIR.

Response to comment LO185-7

The EIR analyzes the Delta Plan’s significant adverse impacts on the environment. It provides a general description of the existing conditions in Sections 3 through 21 of the DEIR including declining conditions in the Delta, such as invasive species, but does not analyze the impacts of current operations and programs there, except as part of the No Project alternative, as discussed in Master Response 1. It is important to note that habitats in the southern Delta have changed in the last 40 years. The recent USFWS Biological Opinion on operations of the CVP and SWP (page 157) indicates that: “Reduced Delta outflow during autumn has led to higher salinity in Suisun Bay and the Western Delta while the proliferation of submerged vegetation has reduced turbidity in the South Delta. Together, these mechanisms have led to a long-term decline in habitat suitability for delta smelt. High summer water temperatures also limit delta smelt distribution (Nobriga et al. 2008) and impair health (Bennett et al. 2008).” This information was used in preparation of the EIR analysis and included in the references in Section 4 of the EIR.
Response to comment LO185-8

Please refer to response to comment LO185-7. Neither the Delta Reform Act nor the Delta Plan affects water rights (Water Code §§ 85031, 85032(i)). Similarly, the SWRCB’s update of the flow objectives will not directly affect water rights. Please see Master Response 5 for further discussion of the EIR’s analysis of the protections for exiting water users and users. These protections are included in all of the alternatives analyzed in the EIR.

Response to comment LO185-9

The EIR acknowledges in Section 7 that ecosystem restoration projects could cause the conversion of farmland to non-agricultural uses. To the extent that this comment states that such potential conversion is a flaw in the Delta Plan, it is a comment on the project, not on the EIR.

Response to comment LO185-10

The EIR analyzes the Delta Plan’s significant adverse impacts on the environment. It provides a general description of the existing conditions in Sections 3 through 21 of the DEIR including declining conditions in the Delta, such as invasive species, but does not analyze the impacts of current operations and programs there, except as part of the No Project alternative, as discussed in Master Response 1. This is a comment on the project, not on the EIR.
Response to comment LO185-11

The Draft Program EIR did not evaluate implementation of BDCP as part of the Proposed Project or the alternatives. Please refer to Master Response 1.

Response to comment LO185-12

Please refer to response to comment LO185-11.
Response to comment LO185-13
Please see Response to Comment LO185-7.

Response to comment LO185-14
The Final Draft Delta Plan, which is analyzed in the Recirculated Draft PEIR, includes performance standards.

Response to comment LO185-15
As described on page 2A-6, the Proposed Project does not require specific water reliability projects; rather it contains broad requirements and recommendations such as the identification by water suppliers of specific programs and projects that will improve self-reliance. The EIR assumes that the Delta Plan’s policies and recommendations will be successful and will lead to an increase in local and regional water reliability projects. As described in Table 2B-1, some of those projects could include surface and groundwater projects, ocean desalination, and recycled wastewater and stormwater projects. Pursuant to CEQA Guidelines section 15125(a), the EIR compares the Delta Plan’s environmental effects to existing conditions at the time of the publication of the Notice of Preparation of this EIR in December 2010. Because of the programmatic nature of the analysis (please refer to Master Response 2), no specific quantitative analysis was conducted.

Response to comment LO185-16
In Section 1.3.3, the PEIR summarizes the legislative findings (Water Code sections 85001-85004) found in the Delta Reform Act, and in doing so, indicates that historically, “Salinity [in the Delta] would fluctuate, depending on the season and the amount of precipitation in any one year, and the species that comprised the Delta ecosystem had evolved and adapted to this unique, dynamic system.” In addition, the summary explains that the operations of state and federal water projects have altered the natural salinity variations in the Delta, and that “Restoring a healthy estuarine ecosystem in the Delta may require developing a more natural salinity regime in parts of the Delta.” These statements focus on restoring variability rather than making the case that the Delta was saltier in the past. This restoration of variability is supported by Moyle et al. (2010), who suggest that a focus on estuarine variability, especially as reflected in salinity, would contribute to creating more desirable conditions in the Delta that make exotic species less able to
thrive, improve the productivity of open-water food-webs, and provide more opportunities for native species to find conditions they need to survive.
Response to comment LO185-17

This EIR is not intended to be a NEPA environmental impact statement; however, all of the alternatives are analyzed at an equal level of detail as under NEPA.

Response to comment LO185-18

CEQA does not require the EIR to analyze water rights. The EIR’s analysis of environmental impacts related to water supplies assumes that there would be no changes to water rights, because neither the Delta Reform Act nor the Delta Plan affects water rights (Water Code §§ 85031, 85032(i)). Please see Master Response 5 for further discussion of the EIR’s analysis of the protections for exiting water uses and users. These protections are included in all of the alternatives analyzed in the EIR. To the extent that this comment disputes the definition of “covered action” under the Delta Plan, this is a comment on the project, not on the EIR.

Response to comment LO185-19

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

Response to comment LO185-20

This is a comment on the project, not on the EIR.
Response to comment LO185-21

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

Response to comment LO185-22

Pursuant to CEQA Guidelines section 15125(a), the EIR compares the Delta Plan’s physical environmental effects to existing conditions at the time of the publication of the Notice of Preparation of this EIR in December 2010. As described in Section 3 of the Draft Program EIR, the existing conditions assume operations under criteria of SWRCB Decision 1641 and the current biological opinions issued by the U.S. Fish and Wildlife Service and National Marine Fisheries Service. DWR’s legal position under the California Endangered Species Act is not relevant to the EIR’s analysis of the Delta Plan’s physical environmental impacts. It should be noted, however, that the Department of Fish and Game (now Fish and Wildlife) issued an incidental take permit to DWR in relation to the operations of the State Water Project, allowing incidental take of longfin smelt, in 2009. Pursuant to CEQA Guidelines § 15126.6(e)(2), the No Project Alternative, as discussed in Master Response 1, does not include actions by other agencies that are not reasonably foreseeable.

Response to comment LO185-23

The Draft PEIR acknowledges that actions encouraged by the Proposed Project to restore the Delta ecosystem could reduce the availability of water for users outside the Delta (e.g., Draft PEIR, Section 4.4.3.2). The Delta Plan encourages a range of actions to restore the Delta ecosystem, of which the creation or restoration of habitat (e.g., tidal marsh, floodplains, and riparian habitat) is just one component (Draft PEIR, Section 2.2.2).

Ecosystem restoration involving the creation of habitat could convert agricultural land to habitat. Habitat consumes water through evapotranspiration, the process by which plants absorb water and release it to the atmosphere; this water is no longer directly available to the river system. The new or restored habitat could have a higher evapotranspiration rate than the agricultural land it replaces. The amount of any net increase in consumptive use would depend on various factors including the crop being replaced, the total acreage converted, the extent of coverage by emergent vegetation (tules and cattails) in the new wetland, and the water year type. Water lost from the system as a result of this conversion would in any event be minimal. Orang et al. (2009) suggested that the incremental difference in the evapotranspiration rate for land...
converted from agriculture to wetlands would be 0.78 acre-feet per acre during a normal water year. Changes of this magnitude would not have any significant impact related to water supply.

**Response to comment LO185-24**

The Ecosystem Restoration subsection of each of sections 3 through 21 discusses the environmental impacts of Delta Plan policies and recommendations related to the coequal goal of protecting, restoring, and enhancing the Delta ecosystem, including Delta Plan recommendation that the SWRCB adopt flow objectives for the Delta and major tributaries. In particular Section 3 considers the water supply impacts of this policy, and section 7 considers its impacts related to agriculture. Section 3 concludes that while these flow objectives could reduce the availability of Delta water to some users, the development of local and regional water supplies would ensure water users’ ability to meet demand and thus prevent significant impacts; the Reliable Water Supply subsection of sections 3 through 21 discusses the impacts of such projects.

Neither the Delta Reform Act nor the Delta Plan affects water rights (Water Code §§ 85031, 85032(i)). Similarly, the SWRCB’s update of the flow objectives will not directly affect water rights. Please see Master Response 5 for further discussion of the EIR’s analysis of the protections for exiting water uses and users. These protections are included in all of the alternatives analyzed in the EIR.

The EIR analyzes, and mitigates, the impacts for the Delta Plan; it does not offer mitigation for the current water supply operations. To the extent that this comment pertains to the merits of the Delta Plan’s approach to furthering the coequal goals, it is a comment on the project, not on the EIR.
Response to comment LO185-25

Please refer to Master Response 1.

Response to comment LO185-26

This is a comment on the value of the transfers encouraged by the Delta Plan in furthering the coequal goals. This is a comment on the project, not on the EIR.
Response to comment LO185-27

Section 5 of the EIR analyzes the flood risk-related impacts projects encouraged by the Delta Plan, including levee projects, and compares these impacts to those of the No Project Alternative.

Response to comment LO185-28

Comment noted.

Response to comment LO185-29

Entrainment is described in the Draft PEIR, Section 4.3.2.1.7, as one of the factors affecting the Delta ecosystem. This description of the environmental setting is focused primarily on the CVP and SWP export facilities; however, the section also indicates that other smaller diversions, including agricultural diversions, are located in the Delta. The discussion of agricultural diversions is limited in the EIR because the Delta Plan does not specifically encourage any actions that would affect these current diversions. Thus, the impact analysis does not address the current or future influence of agricultural diversions on the ecosystem.

While the analysis of the impact of agricultural diversions in the Delta on aquatic resources is not within the scope of the Draft PEIR, the effects of entrainment caused by these diversions is mentioned in the Final Draft Delta Plan on page 142, line 30, which states “In-Delta unscreened diversions do not currently appear to entrain substantial numbers of salmon or smelt.”

Response to comment LO185-30

The EIR analyzes the Delta Plan’s impacts on agricultural resources in Section 7. Any balancing of the Delta Plan’s objectives is reserved for the Delta Stewardship Council and is neither a required nor an appropriate topic for the EIR.
**Response to comment LO185-31**

Regarding the range of alternatives considered in the EIR, please refer to Master Response 3. The EIR did not evaluate implementation of BDCP as part of the Delta Plan or the alternatives; please refer to Master Response 1.

**Response to comment LO185-32**

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 were permitted and funded at the time of the Notice of Preparation of the EIR. The analysis of the No Project Alternative in Sections 3 through 21 of the DEIR and RDEIR assumes all of these conditions. The No Project Alternative does not include future projects that would require future studies, environmental documentation, or permitting, including projects encouraged by the proposed Delta Plan or one of the alternatives. It does assume that agencies will take any particular actions, currently unplanned, on the basis of general legal duties.
Response to comment LO185-33
Exports under Alternative 1B would be similar to existing conditions, but greater than under the Revised Project, which encourages more local and regional water supplies, water use efficiency and conservation, and other reliable water supply actions.

Response to comment LO185-34
As described in Section 2.3.2 of the Draft Program EIR, the No Project Alternative does not include speculative future projects that would require future studies, environmental documentation, or permitting, such as raising levees. However, the No Project Alternative does assume that maintenance and repairs would continue as under existing conditions.

Response to comment LO185-35
This is a comment on the project, not on the EIR.

Response to comment LO185-36
Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Response to comment LO185-37
Comment noted; the requested change would not affect the evaluation of impacts and determination of significance.

Response to comment LO185-38
Please refer to responses to comment LO185-18.
Response to comment LO185-39
The EIR analyzes the Delta Plan’s significant adverse impacts on the environment. It provides a general description of the existing conditions in Sections 3 through 21 of the DEIR, but does not analyze the impacts of current processes there, except as part of the No Project alternative, as discussed in Master Response 1.

Response to comment LO185-40
Please refer to response to comment LO185-10.

Response to comment LO185-41
This is a comment on the project, not on the EIR.

Response to comment LO185-42
The Revised Draft PEIR analyzes the environmental impacts of the Final Draft Delta Plan, which the Council will consider for approval.
No comments
- n/a -

project has not yet been determined and thus it is premature for the DEIR to be released to the public for comment.

Please call me if you have any questions or comments.

Very truly yours,

John Herrick

JOHN HERRICK