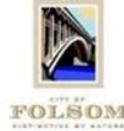


LO198 City of Folsom

January 30, 2012

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



Re: Comments on Draft EIR and Water Supply

Dear Ms. Macaulay:

Thank you for the opportunity to comment on the draft environmental impact report (DEIR) for the Delta Stewardship Council's draft Delta Plan. Under California's long-standing water right and area-of-origin laws, Folsom uses the American River to meet the needs of our businesses, residents, and environmental stewardship. The City of Folsom (Folsom) recognizes the importance to develop a statewide Delta solution, while also improving the City's water management activities to support the Lower American River region's economic vitality, environmental resources and quality of life.

As a participant in the American River Water Forum, Folsom has invested significant resources to establish an affordable and self-sufficient water supply - unlike most regions of California. The City's water supply is a crucial economic and environmental asset that not only allows our community to maintain and attract businesses and jobs; but to also support natural treasures for which our City has successfully protected.

LO198-1

Folsom fully supports our region's implementation of the coequal goals of water supply and environmental stewardship as established through the Water Forum Agreement (WFA). Folsom is concerned that the Delta Stewardship Council (DSC) does not recognize the supply management and environmental stewardship created through the WFA. This agreement protects the American River - a federal Wild & Scenic River; and numerous agreements on the Sacramento River that balance fish habitat and passage, critical habitat on the Pacific Flyway, and the water needs of farms and communities.

The comments below reflect Folsom's concerns and perspectives as an agency within the upper watersheds, and contributes to the water that flows into the Delta and exported from the Delta.

PROPOSAL TO RECREATE GOVERNMENT REGULATORY STRUCTURES IS REDUNDANT AND UNNECESSARY
The Delta Plan, through Recommendation WQ R3, specifies that the State Water Resources Control Board (State Board) and/or the Central Valley Regional Water Quality Control Board (CVRWQCB) complete development of a Strategic Workplan for protection of groundwater and its beneficial uses, including groundwater use for drinking water, by December 31, 2012 (Fifth Draft Plan, p. 141, 15-18.).

Besides establishing an unrealistic timeline for development, this recommendation would establish a duplicative effort with the existing groundwater strategy already being undertaken by the CVRWQCB. In August of 2010, the CVRWQCB adopted the Groundwater Quality Protection Strategy: A "Roadmap" for the Central Valley Region. Additionally, the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins already incorporates the Department of Public Health's drinking water standards as water quality objectives for all groundwater. The State has already established a process for the protection of groundwater beneficial uses.

LO198-2



Response to comment LO198-1

Comment noted.

Response to comment LO198-2

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

The related issue of nutrients in Central Valley ground waters is already being undertaken through the CV-SALTS process, and the deadlines articulated in this requirement do not coincide with the timelines for that effort. Folsom suggests that rather than requiring the State Board or CVRWQCB to undertake an entirely new effort in such a short timeframe, the Delta Plan should simply acknowledge the CVRWQCB's current ongoing efforts and their designated timelines.

LO198-2

LACK OF CLARITY REGARDING THE PROPOSED PROJECT

The Project Description is incomplete and does not provide an adequate understanding of what the Delta Plan is intended to achieve. Also, the project description does not provide or describe the changes the public can expect as a result of adopting the Delta Plan.

The failure of the DEIR to adequately define and identify the scope of the project precludes the public from being able to assess the Project's environmental impacts. Since the Delta Plan is wide reaching and seeks to establish invasive policies and recommendations, the lack of an accurate, stable, and finite project description leave many potentially subject to the Delta Plan unsure of the plan's impact on the environment.

LO198-3

The lack of any clear identification of how the Delta Plan affirmatively achieves the project objectives prevents any analysis of relative environmental impacts of the Project. If the Delta Plan's Project will not result in any physical changes to the Delta region, it is not clear how the Project is superior to the No Project Alternative. The DEIR dismisses potential alternatives, including the No Project alternative, explaining that none of the alternatives will successfully achieve the coequal goals – at least not as well as the Project.

LO198-4

DELTA PLAN PROPOSES CATASTROPHIC CHANGES TO WATERWAYS WITHOUT ANY ANALYSES OF IMPACTS

The draft Delta Plan describes potentially catastrophic changes to river flows in the rivers of our region through the implementation of an ill defined "more natural flow regime." The DEIR, however, fails to identify and accurately analyze the impacts that this change would have on the unique environmental resources of the north state, and on our water supply reliability for much of northern California. This action will add to the impacts of region's critical economic asset – our locally sufficient and affordable water supply.

FAILURE TO ANALYZE AND DEFINE THE NATURAL FLOW REGIME AND ENVIRONMENTAL IMPACTS

Folsom is concerned that the DSC's DEIR fails to analyze the impacts of the primary ecosystem tool on which the DSC relies through the implementation of a "more natural flow regime" on our region's economic and environmental resources. The DEIR states repeatedly that implementing a "more natural flow regime," which is not defined in any meaningful way, will help improve the Delta ecosystem. Given the DEIR's lack of clarity on this issue, we can only assume that implementation would result in less water being stored in reservoirs that our communities rely on and an adverse impact on the operation of Folsom Reservoir due to flow releases to protect the Delta while threatening the single source of water supply for the City. Draining Folsom Reservoir would have significant adverse impacts on Folsom's water supply that is not thoroughly evaluated in the DEIR.

LO198-5

FAILURE TO DEFINE AND ANALYZE THE IMPACTS FROM NATURAL FLOW REGIME ONTO HABITAT

The DEIR also fails to analyze the impacts implementing the undefined "more natural flow regime" would have on refuges, rice fields, and managed wetlands that support migratory birds on the Pacific Flyway; reservoir cold-water pools on which the Central Valley's salmon and steelhead, and California's salmon industry, depend; and recreational opportunities that make this region unique. For example, the DEIR simply assumes that, if such flow requirements were implemented, they would "take into consideration the flow needs of special-status fish species . . . [and] would represent a beneficial change for special-

Response to comment LO198-3

Please refer to Master Response 2.

Response to comment LO198-4

Please refer to Master Response 3.

Response to comment LO198-5

The Delta Plan's recommendation that the SWRCB adopt flow objectives to create a more natural flow regime, and EIR's analysis of the potential impacts of such a flow regime, are discussed in Master Response 5.



status fish” (DEIR, p. 4-70). The environment of the north state deserves more careful analysis than this.

LO198-5

Without a proper analysis, the north state urban areas, environmental groups and recreation groups will be left to reactively develop and analyze impacts to the Delta and exports of water from the Delta rather than including this analysis in the Delta plan – the DSC is inappropriately pushing required Delta impact analysis and its burdens from to the upstream interest groups.

FAILURE TO ANALIZE IMPACTS TO REDIRECT WATER SUPPLIES

The DEIR fails to analyze impacts that will result from redirecting water supplies to the Delta. It dismisses water-supply impacts by assuming communities will simply develop other water supplies without definition or discussion (DEIR, pp. 3-84 to 3-85). As demonstrated in the City’s groundwater management plan, Folsom lies on granite and does not have the luxury of simply importing water from other regions of the state or developing a groundwater exchange program without implementation of the WFA. Because the DEIR fails to analyze water supply impacts, the DSC is pushing the burden and impact analysis to the City and similar north state groups for necessary investments in conjunctive use and water transfers to maintain reliable water supplies.

LO198-6

FAILURE TO ANALIZE HYROELECTRIC POWER REDUCTIONS BY REDIRECTING WATER SUPPLIES

As an agency adjacent to Folsom Dam and a beneficiary of the Sacramento Municipal Utility District’s forward planning, Folsom is concerned that the DEIR has no thorough analysis of the potential reduction in the capacity to produce hydropower. This clean, renewable electric power from north state rivers and streams is critical to California and the western United States. The need to secure alternative power sources would be costly, both economically and environmentally – a thorough impact analysis is not provided.

LO198-7

DELTA PLAN REQUIRES EVALUATIONS FOR RECYCLING/REUSE EFFICIENCY AND URBAN RUNOFF TO REDUCE CONTAMINANT LOADS BY JANUARY 1, 2014, IS COSTLY, UNNECESSARILY AND BURDENSOME

By January 1, 2014, under to Recommendation WQ R8, the Delta Plan specifies that the Regional Board require responsible entities that discharge wastewater treatment plant effluent or urban runoff to Delta waters to evaluate whether all or a portion of the discharge can be recycled, otherwise used, or treated in order to reduce contaminant loads to the Delta (Fifth Draft Plan, p. 149, 10-14).

This evaluation and analysis as required by Resolution R5-2009-0028, is already performed by the appropriate entities on cycles defined in each permit with the Regional Board as part of the permit renewal process in the Report of Waste Discharge (ROWD). The additional requirement separates the evaluation, which takes place during the preparation of the ROWD.

The general reference to all “contaminants” is inappropriate. The process of renewing permits includes a comparison of the quality of effluent to the appropriate water quality criteria for the water body. When a permitted project has reasonable potential to exceed the water quality criteria, limits and possibly other requirements are put in the State permits or other mechanisms to protect the water quality of the water body and its beneficial uses.

LO198-8

Recommendation WQ-R8 appears to provide a general call for reduced loadings from municipalities, which goes beyond established regulatory policies and requirements. (Fifth Draft Plan, p. 149, 10-14.) This recommendation suggests that the State’s Regional Boards require certain types of treatment merely because such treatment may be feasible, though not necessarily required. Pursuant to Water Code section 13360(a), the Regional Board may not dictate the manner of compliance. Rather, the Regional Board is required to set effluent limitations for facilities designed to protect beneficial uses and ensure compliance with water quality standards; however it is then left to the discretion of the local agency to establish the method to comply with those effluent limitations.

3



Response to comment LO198-6

The Delta Plan encourages a variety of local and regional water supply projects, not simply groundwater development. The EIR nonetheless concludes that reductions in Delta water availability may be sufficient to cause significant amounts of conversion of agricultural land to other uses (DPEIR at 7-27). As discussed in Master Response 5, the EIR’s conclusion that such supplies will allow other water users to reduce reliance on the Delta without significant water-supply related impacts is supported by substantial evidence.

Response to comment LO198-7

Please refer to response to comment LO198-5 and Master Response 5.

Response to comment LO198-8

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

Thus, Recommendation WQ R8 proposes a recommendation that directly contradicts applicable water quality laws and must be removed.

LO198-8

THE APPROACH TO STRESSOR FEES AND A DELTA FUNDING STRUCTURE REMAIN PROBLEMATIC
The stressor fee funding structure contained within the Delta Plan has fundamental flaws as follows:

1. The fee proposal is not inclusive of all stressors and is therefore neither fair nor equitable;
2. The stressor fee concept fails to account for numerous fees already paid by local agencies not only towards regulatory oversight, but towards water quality monitoring and planning efforts; and
3. There is no credit is given to entities who spend funds to reduce impacts to the Delta such as significant resources invested in the WFA.

LO198-9

NO NEXUS FOR UPFRONT FUNDING OF DELTA STEWARDSHIP COUNCIL

Folsom strongly opposes the DSC’s proposal to procure ten years of up-front funding for the DSC and Delta Conservancy, to ultimately be reimbursed by local ratepayers for the Delta fees. The State should not be entitled to establish a revenue structure that would reimburse the “up-front” funding. This structure creates a program where local agencies would establish local water rate increases to pay the State fees, which includes an allocation of reimbursement back to the local agencies – in other words, the local rate payers would pay for the upfront fees and pay the allocation of the state fees to reimburse themselves, which could constitute a double charge.

LO198-10

Moreover, the state would be collecting fees for a 10-year program that has no guarantee of existing in the 10-year period - agencies have no guaranteed funding source for a ten-year period into the future; collecting and maintaining such a reserve (at the expense of rate payers) is unprecedented and would be established with no nexus for how the funds would be applied towards the DSC programs or projects.

IMPACT ANALYSIS FAILS TO ADDRESS THE IMPACTS TO THE DELTA ECOSYSTEM

The Delta Plan fails to address the significant role of exports, non-native species, and entrainment on the deterioration of the Delta ecosystem. Specifically, Folsom has the following concerns on the Delta Plan’s impacts to the Delta ecosystem:

- Fails to include time series charts and other information pertaining to entrainment losses associated with Delta exports since the State Water Project (SWP) and Central Valley Project (CVP) were placed in operation, information that would demonstrate the long term and ongoing impact of exports through those projects on the Delta ecosystem.
- Fails to include specifics regarding the impact of exports on fish species (such as information contained in the August 2010 SWRCB Delta flow criteria document) as well as other entrainment information such as mortality numbers, possible population effects, and a variety of indirect effects on Delta species. The
- Fails to include stated goals or performance measures for the reduced loss of fish through entrainment in the South Delta, or for specific activities that would reduce these losses, is a glaring omission that should be rectified, especially considering the importance to any stressor fee determination.
- Infers that installation of reverse osmosis (membrane) treatment at wastewater treatment facilities is a plausible outcome from the Delta Plan activities. The DEIR fails to address the significant environmental impacts of membrane treatment (energy use, greenhouse gas impacts) and long-term commitment of resources.
- Incomplete in its assessment of the net environmental impact (i.e. actual or potential benefits versus certain adverse environmental impacts) of specific actions that are identified as plausible effects of a proposed treatment project.
- Incorrectly states that CVRWQCB policies and plans do not include strategies to effectively protect drinking water (p. 2-41). Results of the technical investigations indicate that drinking water uses are

LO198-11



Response to comment LO198-9

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

Response to comment LO198-10

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

Response to comment LO198-11

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 water quality in the Delta and elsewhere, but does not analyze the impacts of current operations and programs except as part of the No Project alternative, which is discussed in Master Response 1.

Regarding the commenter’s request for additional detail regarding the operations of the SWP and CVP, please see Master Response 2.

The Final Draft Delta Plan, which is analyzed in the Recirculated Draft PEIR, includes performance measures to gauge the plan’s advancement of the coequal goals, including a measure considering progress toward increasing salmonid populations (Final Draft Delta Plan at 165).

The EIR discusses reverse osmosis systems among the potential types of wastewater treatment plants that the Delta Plan could encourage (DPEIR at 2A-9, 18, 22, 44). The Water Quality Improvement subsection of sections 3 through 21 of the EIR discusses the environmental impacts of water quality projects.

Subsection 3.3.3.2 of the Draft Program EIR discusses water quality issues that have been identified by the SWRCB and Central Valley and San Francisco Bay RWQCBs and that are being addressed in ongoing programs, including programs for drinking water in small and disadvantaged communities and water quality objectives to be addressed with ongoing Total Maximum Daily Load (TMDL) programs. Appendix D of the DPEIR provides a listing of TMDLs promulgated by the State as well as those under development by federal and State agencies.

effectively protective to the Delta based on an assessment of current ambient levels of organic carbon, pathogens and salts.

- Implies that inadequate wastewater treatment is causing contamination of surface water and/or ground water in many areas of the Central Valley (p.2-44). This implication is unsupported and inaccurate.
- Overemphasizes contaminants and discharge as a “stressor” to the Delta ecosystem; and does not, in a balanced way, discuss the significant information that exists regarding the adverse effects of exports and entrainment on that same ecosystem.

LO198-11

The Delta Plan’s general concept that stressor “reduction”, at any level, will produce net positive outcomes is problematic. Projects required on the basis of “stressor reduction” may, in fact, provide little benefit to beneficial uses. On page ES-7, it is stated, “the Delta Plan involves an environmental tradeoff between short-term construction impacts and long-term impact reductions related to water reliability, water quality, flood risk and ecosystem health.” This statement presupposes that all of the projects proposed in the Delta Plan will, with certainty, accomplish the long-term impact reductions, that such reductions have been clearly defined, and that the improvement is measurable. At least with regard to water quality and ecosystem health, such certainty does not exist.

LO198-12

CONSISTENCY DETERMINATIONS

The Delta Plan exempts from the definition of “covered actions” regulatory actions by other state agencies. (DEIR, p. 2A-2.). However, the DEIR states that the underlying actions regulated by those agencies would not be exempt. This creates an added level of bureaucracy within the state regulatory process and adds burdens onto local agencies seeking to meet regulatory requirements

For example, a local project required to implement a state regulatory requirement, such as wastewater treatment plant upgrades, would incur significant adverse consequences since the project would be required to prepare detailed findings of consistency with the Delta Plan and the potential for environmentally beneficial projects. This additional process also impacts the local agency’s risk for delays by a lengthy and uncertain appellate process and potential litigation over the consistency determination for undefined requirements of the Delta Plan. This is an unreasonable action within the Delta Plan and its impacts are not addressed in the DEIR.

LO198-13

It should be noted that, to the extent the Delta Council would seek to modify the projects that implement state regulatory requirement, any DSC modifications would effectively substitute the DSC’s inexperienced judgment for that of the permitting agency.

The Delta Plan should do everything possible to facilitate and encourage projects that implement regulatory requirements, rather than creating substantial obstacles in terms of time and cost that unreasonably delay their implementation. To that end, the Delta Plan should be revised to clearly exempt projects that implement NPDES permits and similar regulatory requirements adopted for the protection of the environment.

BDCP IMPLICATIONS

The DEIR needs to clarify, through direct statements that the certification of the Delta Plan EIR will in no way override, negate or otherwise influence the process for review and approval for the Bay Delta Conservation Program (BDCP) or the BDCP EIR. If the BDCP is incorporated into the Delta Plan, its provisions may be deemed to constitute “policies” of the Delta Plan, which is not addressed in this DEIR.

The DEIR should:

- (1) Provide full discussion of the BDCP in the project description and evaluate the impacts of the BDCP as part of the project and all alternatives.

LO198-14



Response to comment LO198-12

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

Response to comment LO198-13

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

Response to comment LO198-14

Regarding the relationship between BDCP and the Delta Plan, please refer to Master Response 1.

Regarding mitigation for ongoing operations in the Delta, please see response to comment LO198-11.

The Final Staff Draft Delta Plan discusses the meaning of water supply reliability in Chapter 3.

Response to comment LO198-15

Comment noted.

- (2) Be revised to clearly explain how, if at all, the mandatory incorporation of the BDCP into the Delta Plan would alter or expand the scope of the Delta Plan's regulatory effect, and analyze the potential environmental effects of this expanded regulatory scope of the BDCP.
- (3) Identify mitigation for the continued use of the South Delta pumps that will occur under any of the alternatives considered, and is recognized to have caused significant long-term impacts. Implementation of a north Delta intake under the BDCP is not mitigation for the significant loss of fish that will continue to occur in the South Delta, since exports from the South Delta is projected to still represent the vast majority of water exported by the State and federal projects.
- (4) Address mitigation for the continued operation of the South Delta pumps and the indirect effects of South Delta exports, including food web effects, altered flow regime, modified salinity regime, increased residence time that increase the suitability of the delta to invasive species and *Microcystis* and impact the Delta food web.
- (5) Clearly state that water supply reliability is not in any way synonymous or equivalent to the concept of increasing Delta exports since one of the co-equal goals of the Delta Plan and its enabling legislation is "water supply reliability."
- (6) Address whether reducing exports to levels which result in a sustainable Delta ecosystem will enhance the reliability of those lesser export amounts.

LO198-14

Thank you for the opportunity to comment on the DEIR. As outlined in our shared principles, we look forward to working with the Stewardship Council and interests throughout the state to develop an effective and equitable solution to the water supply and environmental challenges that face the Delta. Some of the signatories below look forward to submitting additional comments.

LO198-15

Very truly yours,
CITY OF FOLSOM
Kenneth V. Payne, P.E., Chief
Water Resources & Environmental Development

