

# LO199 City of Sacramento

## Response to comment LO199-1

Comment noted.



OFFICE OF THE  
CITY MANAGER

CITY OF SACRAMENTO  
CALIFORNIA

CITY HALL  
913 I STREET  
5TH FLOOR  
SACRAMENTO, CA  
95814-2604

PH 916-808-5704  
FAX 916-808-7618

February 1, 2012

EIR Comments, Delta Stewardship Council  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

Re: **Draft EIR for the Delta Plan (SCH #2010122028)**

The City of Sacramento hereby submits its comments regarding the Draft Environmental Impact Report for the Delta Plan (SCH #2010122028) (Draft EIR).

### Introduction

We commend the Delta Stewardship Council (DSC) in their difficult task to develop a plan and Draft EIR that satisfies the co-equal goals laid out in the Sacramento-San Joaquin Delta Reform Act, and the engagement of the DSC Board members and staff in seeking comments from stakeholders to improve the plan. The City is interested in participating in a long-term solution to California's water challenges.

The City supports the co-equal goals of restoring the ecological health of the Delta and creating a reliable water supply for the state. The City is very concerned with the health of the Delta and the tributary watersheds. The City values our environmental resources and supports sustainability and maintenance of their quality for current and future generations. We are a leader in stewardship of water quality in the region, applying practical cost effective solutions to water pollution and encouraging environmentally balanced and sustainable regional and watershed-wide solutions developed through collaborative stakeholder processes.

The City provides a domestic water supply, wastewater collection and treatment services, as well as stormwater collection, management, and discharge for the residents of the city. The City designed, operates, and maintains its wastewater and stormwater systems in accordance with its National Pollutant Discharge Elimination System (NPDES) permits issued by the State

LO199-1

of California. These permits ensure protection of the beneficial uses of the Sacramento River and downstream waters, including the Sacramento-San Joaquin Delta. LO199-1

Our comments are intended to assist the DSC in its task of developing a Draft EIR that complies with the California Environmental Quality Act (CEQA) and provides a sound foundation for subsequent environmental review of the Delta Plan itself as it is ultimately fashioned, as well as the numerous individual projects that ensue.

**The Draft EIR's Analysis of Upstream Water Supply Impacts is Inadequate**

As noted in the comments submitted by the Northern California Water Alliance, the Draft EIR states that implementing a "more natural flow regime" will benefit the Delta, without analyzing the impacts that will result from redirecting water supplies (including, presumably, water supplies for upstream areas such as the City of Sacramento) to the Delta. (Draft EIR, at pp. 3-84 to 3-85.) Rather than analyzing these impacts, such impacts are essentially dismissed based on the assumption that affected communities will make up for any water supply reductions through the development of alternate water supplies, water transfers and water efficiency and water conservation programs. Based on this assumption, the Draft EIR states that it is anticipated that the total water supply available to such communities will remain the same or increase. (Draft EIR, at p. 3-85.) With respect to upstream areas, such as the City of Sacramento, this conclusion is factually incorrect, improperly avoids the impact analysis mandated by CEQA and is not based on substantial evidence.

First, with respect to surface water supplies, the City of Sacramento has no alternative to diverting water from the American and Sacramento Rivers. If implementation of a different flow regime to benefit the Delta reduces water available for diversion from the Sacramento and/or American Rivers, the City, and other water purveyors in this region, cannot obtain alternative surface water supplies from sources that do not affect flows into the Delta. The approach identified in the Draft EIR may be a feasible alternative for areas that use water exported from the Delta watershed, but in the Sacramento region, surface water diversions from the American and Sacramento Rivers are the "local water supplies" that the draft Delta Plan seeks to increase (Fifth Draft Delta Plan, at pp. 79-81). LO199-2

If our region's surface water supplies are reduced by implementation of the Delta Plan, the only alternative water supply that does not directly affect Delta flows is groundwater, and the Draft EIR fails to provide any analysis of the potential impacts resulting from increased use of groundwater. Instead, the document simply concludes that there would be no significant impact due to the potential increased groundwater pumping resulting from reduced surface water reliability in areas outside of the Delta, because "the Proposed Project encourages the sustainable use of groundwater supplies to avoid adverse effects on groundwater supplies." (Draft EIR, at p. 3-84.) This assumption is an unacceptable substitute for actual analysis of the potential impacts of the increased groundwater pumping that may result from implementation of the Plan's proposed flow regime, is not based on substantial evidence and engages in speculation as to future actions. It also ignores the potential for cumulative effects of such a policy change.

The Draft EIR fails to address the impacts associated with requiring increased reliance on groundwater by water users in the Sacramento area in light of ground water contamination, conjunctive use, and other factors. The city presently is a valuable source of surface water for others who rely primarily on

## **Response to comment LO199-2**

As described on page 2A-39, Lines 38 through 40, of the Draft Program EIR and Master Response 5, it is anticipated that implementation of updated water quality and flow objectives by the State Water Resources Control Board (SWRCB) could increase Delta outflow, reduce current reverse flow conditions in the south Delta, increase flows in restored Delta floodplains, and result in a more "natural flow regime" in the Delta. Neither the Delta Plan nor the SWRCB's flow objectives will affect water rights. 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. Please see Master Response 5 for further discussion of the EIR's analysis of the updated flow objectives and the protections for exiting water uses and users. Users of CVP water in the Delta watershed could be affected if the SWRCB changes Delta outflow requirements in a manner that changes CVP water supply availability. The proposed Delta Plan also encourages the increased use of local and regional water supplies, water use efficiency, water recycling, and groundwater conjunctive use programs to meet water demands projected to be required to accommodate the development called for in existing general plans.

groundwater, but also require surface water supplies in order to implement conjunctive use and/or mitigate the impact of groundwater contamination. The potential adverse impacts of the Proposed Project's reduction of surface water supplies on conjunctive use programs and mitigation of groundwater contamination are not identified or evaluated in the Draft EIR.

These comments should not be interpreted as reducing the City's commitment to increased conservation and water use efficiency. The City has made that commitment and is developing a plan to enhance our efforts in this respect, which already have included the installation of approximately 33,000 water meters since 2005 and significant investments in state-of-the art metered water technology to track water usage and detect leaks or other anomalies so that they may be promptly remedied. The City is making significant progress in complying with the Water Conservation Act of 2009 (the 20 by 2020 plan). Our efforts do not obviate the need for an adequate analysis of the supply side, and the impacts associated with potentially significant reductions to water rights and supplies in the areas of origin tributary to the Delta.

Second, the Draft EIR fails to identify or analyze potential impacts resulting from the implementation of Recommendation WR R5, which states that proponents requesting a new point of diversion, place of use or purpose of use, or extension of time, for existing water rights to divert water in the Delta watershed should be required to demonstrate that they have evaluated and implemented all other feasible water supply alternatives. This requirement could foreseeably prevent holders of existing water rights, such as the City of Sacramento, from further developing their existing surface water rights and supplies, could lead to increased groundwater use, less effective conjunctive use programs, increased groundwater contamination, and/or could require the construction and operation of new facilities, such as recycled water facilities. The Draft EIR makes no effort to analyze the potential impacts associated with any of these consequences, nor does it provide any explanation of how this Recommendation would be applied to existing senior water right holders and/or new water right applicants within areas of origin in a manner that is consistent with the water right priority doctrines, as mandated by State law. Moreover, the Draft EIR appears to assume that the impacts on the Delta of surface diversions occurring within areas of origin, such as the City of Sacramento, are the same as all other diversions, including those that do not involve return flow to the Delta. This is factually incorrect. This failure to identify and assess impacts, and potential mitigation measures, is inconsistent with the requirements of CEQA.

Third, with respect to upstream areas, such as the City of Sacramento, there is no factual basis for the Draft EIR's assumption that water supply reductions would be mitigated, in part, by water transfers. While surface water transfers obviously need to be part of the overall Statewide water supply solution, surface water transfers will not increase the water supply available to our region because such transfers generally consist of transferring water out of, rather than into, our region. (Draft EIR, at p. 3-85.) In addition, Recommendation WR R5 may prohibit certain transfers that have in the past occurred (such as those the City has in the past undertaken, with SWRCB approval), thus actually reducing the effectiveness of the action identified as mitigation in the Draft EIR.

Fourth, with respect to water efficiency and water conservation programs, the Draft EIR concludes that water supply reductions in areas outside of the Delta would be offset, in part, by the increased use of recycled wastewater and stormwater. (Draft EIR at p. 3-85.) This conclusion lacks an adequate factual

### **Response to comment LO199-3**

As amended in the Final Draft Delta Plan, recommendation WR R3 now recommends that the SWRCB 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 and other provisions of California law, including completion of applicable urban water management plans, agricultural water management plans, and environmental documents.

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.

### **Response to comment LO199-4**

As described in the response to comment LO199-2, the proposed Delta Plan encourages the increased use of local and regional water supplies, water use efficiency and water recycling, and groundwater conjunctive use programs in areas with adequate groundwater aquifers, all in order to meet water demands projected in existing general plans. Due to the need to implement local and regional water supplies throughout the study area, including the Delta watershed, there would be significant impacts associated with construction and operation of those new water supplies, as described in the EIR.

### **Response to comment LO199-5**

As described in this comment, the analysis of the impacts of the proposed Delta Plan and the alternatives due to greenhouse gas emissions, RDEIR Section 21, concludes that use of local and regional water supplies to reduce reliance on the Delta would result in significant impacts.

## **Response to comment LO199-6**

Please refer to response to comment LO199-3 and Master Response 1.

basis. With respect to upstream areas, such as the City of Sacramento, this conclusion lacks a factual basis, because water supply made available through increased recycling of wastewater and/or stormwater would not provide any increased flows for the Delta. If an increment of wastewater that otherwise would be discharged at the Sacramento Regional County Sanitation District (SRCS D) treatment plant near Freeport is instead recycled, there would be no net increase of flows to the Delta because the reduction in surface water diversion associated with the use of the recycled water would be offset by a corresponding reduction in discharge of treated effluent by SRCS D.

Similarly, if an increment of stormwater runoff collected by the City's storm drain system was recycled instead of being discharged to Sacramento or American Rivers, there would be no net increase of flows to the Delta because the reduction in surface water diversion associated with the use of this recycled stormwater water would be offset by a corresponding reduction in discharge of stormwater to the Sacramento or American Rivers. This is one reason why the City of Sacramento, and others, have repeatedly insisted that any regulation of or imposition of charges on surface water diversion or use upstream of the Delta based on Delta flow impacts must account for return flows. (See, e.g., enclosed copy of the City's September 29, 2011 Comments on the Fifth Draft of the Delta Plan, incorporated herein by this reference.)

Although such projects in our region generally would not increase flows to the Delta, they likely could have significant project-level and cumulative environmental impacts for which the Draft EIR proposes no mitigation. For example, the California Air Pollution Control Officers Association (CAPCOA) Guidance Document entitled "Quantifying Greenhouse Gas Mitigation Measures" suggests that the amount of electricity to supply, treat and distribute water in southern California is 11.1 watts per gallon and 3.5 watts in northern California. According to the document, the power required for delivering recycled water varies between 1.2 and 3 watts, but the document suggests assuming 2.1 watts on average. The City of Sacramento can supply potable water using approximately 1.2 watts per gallon, less than the quantity the CAPCOA guidance document suggests for northern California, and we suspect that other agencies that divert surface water within our region can deliver potable water with a similar amount of energy. Based on this data, as well as the fact that the use of recycled water requires the construction and operation of two separate water distribution systems instead of one, it appears likely that the construction and long-term operation of the recycled water facilities to provide a water supply in lieu of surface water diversions, as envisioned by the Draft EIR, would increase greenhouse gas emissions within the watershed. While the Draft EIR does include a chapter on climate change and greenhouse gas emissions, and does acknowledge that recycled wastewater and stormwater projects may increase greenhouse emissions (Draft EIR at pp. 21-9 to 21-13), the document does not specify any meaningful mitigation.

Finally, the Draft EIR's inadequate analysis of potential upstream water supply impacts is underscored by the discussion of the Bay Delta Conservation Plan (BDCP). The Draft EIR, at p. 23-2, notes that the BDCP, if completed and approved, will be included in the Delta Plan, and states that the BDCP is intended to help meet the same co-equal goals as the Delta Plan. However, as noted in the City's comments on the Fifth Draft Delta Plan (enclosed), the water supply reliability goal of the BDCP is to improve the reliability of water deliveries exported from the Delta watershed, which is not the same as the Delta Plan's professed goal of providing a more reliable water supply for the entire State, which includes areas upstream of the Delta. The City's enclosed comments stated our concern that

improved water supply reliability for areas that receive water exported through the Delta may be achieved at the expense of water supply reliability for areas that do not import water, such as the Sacramento region. This concern is highlighted by the Draft EIR's failure to accurately identify and provide any meaningful analysis of the Delta Plan's proposed flow regime, Recommendation WR R5, and other elements of this project, on upstream areas such as the Sacramento region.

LO199-6

**The Draft EIR fails to identify the Impacts of the Bay Delta Conservation Plan**

The Draft EIR states that the BDCP will be automatically incorporated into the Delta Plan if the BDCP meets certain statutory requirements. The legislative decision to incorporate BDCP was apparently premised on the assumption that the BDCP would be completed prior to the Delta Plan and thus subject to full review and analysis prior to this incorporation. Given that the BDCP remains incomplete and is essentially an unknown, the Draft EIR does not, and cannot, take into account the BDCP impacts despite the recognition that the two projects, taken together, are cumulative. The Draft EIR discussion is replete with references to actions that are "anticipated" or "unlikely." The Draft EIR's cumulative impacts analysis evaluates "a range of concepts" regarding aquatic habitat, ecosystem stressor reduction, and other environmental resources. Unlike other policies and recommendations, which call for independent actions by others, the BDCP itself is identified as an integral part of the Delta Plan. Yet the environmental review of the BDCP will not take place until mid-2012, at the earliest. For these reasons, the DSC should revise the Delta Plan to disclose how the BDCP will be used in the consistency process, what portions of the BDCP the Council expects to impose on others, and what impacts, if any, that has.

LO199-7

It is unclear how the incorporation of the BDCP will affect the scope of the Delta Plan with regard to the consistency analysis for covered actions. Query: Does the incorporation of the BDCP mean the provisions of the BDCP will then be deemed to have the regulatory effect of policies in the Delta Plan, with which covered actions must evaluate and demonstrate consistency? If that is the case, then the Draft EIR should explain the effect of the BDCP on enlarging the scope and regulatory reach of the BDCP and evaluate the environmental impacts of extending compliance with the BDCP to all covered actions and not just entities who elect to be voluntary participants in the BDCP, consistent with the original intent of the BDCP.

**The Draft EIR Does Not Identify Impacts of the Financing Plan**

The Draft EIR does not address the potential impacts that may arise as a result of the financing plan. (Fifth Draft Delta Plan Chapter 9.) This may be unavoidable, given that the financing plan remains very uncertain, thus making it difficult to evaluate. However, the financing plan ultimately selected may have potentially significant impacts that should be evaluated as part of the decision as to whether the Delta Plan should be approved and implemented. For example, to the extent that the proposed "stressor fees" place a significant fiscal burden on local governments, those agencies may be forced to defer or forego other improvements or programs designed to improve water quality or protect the environment. The City would have to pay any stressor fees from revenues raised through utility rates. These rates are subject to the constitutional constraints on raising revenue set forth in Proposition 218, which allows local governments to include in their rates only the costs of providing a property related service to their ratepayers.

LO199-8

**Response to comment LO199-7**

Please refer to Master Response 1. 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.

**Response to comment LO199-8**

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). Please refer to Master Response 2. Chapter 8 of the Final Draft Delta Plan, Funding Principles to Support the Co-Equal Goals, is part of the project that is analyzed in this EIR.

The Fifth Draft Delta Plan proposes to assess "stressor fees" against public agencies—which would, in turn, have to be recouped through user fees—yet the plan fails to describe the activities to be funded by these fees and the specific benefits that will accrue to agency ratepayers. There is no clear nexus identified between the proposed fees and the service to be provided. Without such a nexus, agencies would likely be precluded from adjusting user rates to include "stressor fees." In addition, increases in fees to support local stormwater systems are subject to voter approval. While there are vague references in the Fifth Draft Plan to legislative "fixes" for Proposition 218, any changes to this voter approved constitutional amendment would also have to be approved by the electorate and cannot be assumed as part of the Draft EIR analysis.

The Delta Plan assumes that numerous public agencies would be spending millions of dollars on efforts to reduce impacts on the Delta through improvements in treatment capability and fish protection, yet these entities will be required to pay the same stressor fees as those who have taken no early action whatsoever to improve the Delta. The absence of any credit or offset for actions undertaken to reduce a stressor's impact on the Delta ecosystem may create a disincentive to undertake such actions, which has potentially significant environmental impacts that have not been analyzed in the Draft EIR.

A different method of financing scientific studies and research should be selected to avoid placing an undue burden on Central Valley communities. The comprehensive Delta monitoring funded should be funded by the beneficiaries and the State of California. If some of the comprehensive monitoring program cost is allocated to local Central Valley municipal agencies, credit should be provided for local monitoring programs. For example, the Sacramento Coordinated Monitoring Program represents a significant investment for stormwater management programs in Sacramento County.

Alternate funding should be included in the finance plan, including a strategy to seek federal and state grants and loans to help Central Valley communities address the costs of plan implementation.

#### **Revisions Should Be Made to Specific Sections of the Draft EIR Regarding Water Quality**

##### Section 2A Project Description

*Table 2-4 Summary of Delta Plan Environmental Impact Report Proposed Project and Alternatives, page 2A-76*

The Draft EIR states that the Delta Plan recommends aggressive schedules for completion of ongoing studies to improve drinking water quality, including the Central Valley Drinking Water Policy. However, the Delta Plan states that the Plan will improve water quality by promoting and coordinating completion of core State policies, regulations, and projects. We recommend that the language in the Draft EIR be revised to be consistent with the Delta Plan. A more aggressive schedule is not recommended for the Central Valley Drinking Water Policy, which is already being conducted on a very aggressive schedule.

## **Response to comment LO199-9**

The Final Draft Delta Plan (recommendation WQ R4) encourages the Central Valley Regional Water Quality Control Board to complete the Central Valley Drinking Water Policy by July 2013, with implementation to follow, as described in Appendix C of this EIR. This schedule is more aggressive than under Alternative 1B.

Section 2.3.2.3 No Project Alternative, Water Quality Improvement, p. 2A-88

Amend discussion on the Central Valley RWQCB Drinking Water Policy to include narrative water quality objectives. The Draft EIR currently states:

"The proposed amendment would establish numeric water quality objectives to protect drinking water quality." We recommended revised language as follows: "The proposed amendment would establish numeric and narrative water quality objectives to protect drinking water quality."

Section 3, Water Resources

Introduction, Page 3-1

The statement in the introduction to the Water Resources Section acknowledges that impacts to resources could be significant. It is important to recognize that operation related impacts may include aquatic life impacts due to reduced flows if the Delta Plan recommendations regarding recycled water and recycled stormwater are implemented.

3.3.3.2 Surface Water Quality. Salinity, Page 3-10

The Draft EIR states that Delta salinity is influenced by a variety of activities, including stormwater (drainage flows) and wastewater discharges. As the State Water Resources Control Board (and Superior Court decisions) have consistently acknowledged, these sources of salts are *de minimis* when compared to the single biggest factor affecting Delta salinity: flows. It is misleading to list all of these sources without some effort to characterize the relevant contributions to salinity levels.

3.3.3.2 Surface Water Quality and 3.3.4.1.2 Surface Water Quality. Pesticides, Pages 3-11, and 3-18 through 3-19

In discussing pesticides, the Draft EIR notes that continued use of pesticides in the urban environment is contributing to water quality problems in the Delta. Citing the Weston study, the Draft EIR states, in particular, that the City's residential runoff contributes "toxic amounts" of pyrethroid insecticide residues to streams and the American River. This sentence, standing alone, can be read to suggest that the City's municipal stormwater program is somehow at fault for this and should be the focus for future actions. It is important that the Draft EIR note that the United States Environmental Protection Agency and the California Department of Pesticide Regulation have the sole authority to establish rules and limitations regarding pesticide registration and usage, and that these agencies have a responsibility under their statutory mandates to exercise their authority as the primary regulatory tool for preventing aquatic toxicity caused by urban uses of registered pesticides. In addition, the Draft EIR should recognize that the BMPs available to municipal stormwater permittees are generally limited to public education and pollution prevention activities, which are likely insufficient to prevent pesticide impacts of registered pesticides that are not adequately mitigated through Federal Insecticide, Fungicide & Rodenticide Act (FIFRA).

LO199-10

LO199-11

LO199-12

LO199-13

**Response to comment LO199-10**

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

**Response to comment LO199-11**

Impacts to aquatic resources are discussed in Section 4 of the EIR.

**Response to comment LO199-12**

Delta salinity is influenced by many factors, including discharges, changes in Delta flow patterns, tidal dynamics that can be affected by expansion of open water areas in the Delta, and sea level rise. Due to the programmatic nature of the EIR, a quantitative analysis of the conditions was not conducted.

**Response to comment LO199-13**

The text cited by the commenter presents a summary of water quality conditions only. Appendix D of the EIR includes many of the regulations related to pesticide use.

3.4.3.1.1 Water Quality Standards--Construction Effects, Page 3-78

The Draft EIR should address environmental impacts to wetlands resulting from the siting and construction of surface water and groundwater facilities. These projects are likely to displace vernal pools, isolated wetlands and jurisdictional wetlands.

LO199-14

3.4.3.1.2 – Substantially Deplete Groundwater Supplies, Page 3-80 through 3-81

Certain recommendations for construction and operation of facilities may increase reliance on, and use of groundwater, especially in the Sacramento Valley. The Draft EIR does not discuss this impact and how it relates to the conclusion that impacts to groundwater supplies would be less than significant.

LO199-15

3.4.3.3 Water Quality Improvement, Pages 3-85 through 3-86

The Draft EIR states that water quality projects are not directed by the plan and would not be implemented under the direct authority of the Delta Stewardship Council (DSC). The plan "encourages" actions and projects that could lead to construction and operation of projects that could improve water quality, including programs to reduce constituents from "wastewater treatment plants." Example projects include stormwater treatment.

LO199-16

The Draft EIR seems to assume that any projects implemented to improve water quality will be, by definition, environmentally desirable. While we recognize that this is a program level Draft EIR and that further environmental review will be conducted for future actions and projects, it is important that the Draft EIR acknowledge the types of environmental impacts that can occur from requiring additional treatment at municipal facilities, such as increased energy consumption, greenhouse gas emissions, creation of brines or other residuals, loss of natural streambed and habitat, and so on, and state that these impacts must be evaluated and considered during subsequent project level review.

24.1.2.3 Provisions of the Draft EIR Regarding Water Quality Are Not Consistent with the Fifth Draft of Delta Plan

The Draft EIR states that "The Proposed Project recommends implementation of an aggressive schedule for development of water quality objectives, Total Maximum Daily Limits for possible contaminants, and participation by Delta watershed water users or dischargers in programs to improve water quality. In addition, the Proposed Project would include recommendations to the SWRCB, DWR, and the California Department of Public Health to develop aggressive schedules for the completion of ongoing studies to improve drinking water quality."

LO199-17

This language should be revised to be consistent with the fifth Draft of the Delta Plan, by replacing language in the Draft EIR regarding aggressive schedules with language encouraging completion of these efforts.

Section 4 – Biological Resources

The Draft EIR evaluation generally indicates that the proposed project (Delta Plan) would cause significant impact of biological resources. The Draft EIR does not adequately evaluate hydromodification due to implementation of the proposed project (i.e., construction of stormwater

LO199-18

**Response to comment LO199-14**

Impacts to biological resources, including wetlands, are discussed in Section 4 of the EIR.

**Response to comment LO199-15**

The environmental impacts of constructing and operating water quality improvement projects are analyzed in Sections 3 through 21 of this EIR. See response to comment LO199-16.

**Response to comment LO199-16**

Impacts associated with implementation of water quality improvement actions encouraged by the proposed Delta plan and the alternatives related to energy, greenhouse gas emissions, water quality, and biological resources are described in Sections 24, 21, 3, and 4, respectively.

**Response to comment LO199-17**

The Final Draft Delta Plan (recommendations WQ R8, WQ R11, WQ R12 encourage the development and implementation of TMDLs, as described in Appendix C of the EIR, within a more aggressive schedule than under Alternative 1B.

**Response to comment LO199-18**

Sediment impacts as a result of facility construction are described in Sections 4 and 11 of the EIR. Mitigation measures are identified in Sections 4 and 11; however, these environmental impacts would remain significant because implementation and enforcement of these mitigation measures would be within the responsibility and jurisdiction of public agencies other than the Council. Please refer to Master Response 4.

treatment facilities), its impact on sediment supply, and consequent negative impact on the biological resources in the Delta watershed. The Draft EIR does not provide any mitigation measures in addressing the biological resources impact due to alteration of the sediment supply.

**The Draft EIR Fails to Provide an Adequate Basis for Later Analysis**

The Draft EIR does not identify specific actions that could result in significant effects on the environment. The Draft EIR has, in effect, deferred any meaningful mitigation to the project-specific stage, which the Draft EIR recognizes would follow adoption of the Plan. The mitigation included requires, to a great extent, examination and mitigation of potential impacts (e.g., biological resources and site-specific studies combined with avoidance and minimization, erosion including examination of soils and an erosion control plan) that would be followed in the environmental review of any project that is discretionary. The mitigation is, to a large extent, redundant and illusory.

Program EIRs are provided for in CEQA, and the apparent intention of the Lead Agency is that this Program EIR will serve as an adequate review of potential impacts for the Delta Plan, and project-specific documents will tier off it (CEQA PRC section 21068.5) as part of that review. The problem here is that the information supplied in the EIR does not give the "...detailed information about the effect..." of the adoption of the Delta Plan that would in any way enable the lead agency, or interested parties, to identify the real effects, ways to minimize those effects, or to identify feasible alternatives. (PRC section 21061) In the absence of such information and analysis, the EIR will have little value on a project-specific level even for incorporation by reference or programmatic mitigation.

There are positive and productive ways to remedy these shortfalls. For example, the Draft EIR could identify categories of projects that would be likely to occur as a result of plan adoption (e.g., recycled water, levee improvements, park development) and provide a detailed discussion of what individual projects might look like, how they might affect the environment, and what types of mitigation might apply, as well as a discussion of the cumulative effect of such projects (e.g., additional recycling of water or groundwater pumping by numerous agencies in the same geographical area). The fact that the Lead Agency cannot identify and describe future (currently unplanned and unfunded) projects with specificity as to size and location does not mean the Lead Agency is excused from providing as much information and detail as it can. The Lead Agency is cognizant of various categories of projects that would likely ensue as a result of project approval, and it would not require speculation to engage in an analysis of the likely effects of individual projects or categories of projects.

Another approach that should be considered is the scenario approach. The Lead Agency could identify several scenarios that could ensue as a result of adoption of the plan, and evaluate those, on a programmatic basis, for their environmental effects. This would provide the reader with a legitimate basis for comparing the effects of the project as opposed to maintaining the status quo.

The Draft EIR could propose (but does not) an additional round of environmental review and comment prior to the adoption of the plan. That process could include, as examples, development of scenarios, followed by a supplemental or subsequent EIR. This approach is identified and encouraged in the CEQA Guidelines; see section 15167 (Staged EIR).

LO199-18

LO199-19

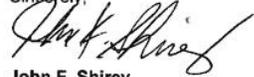
## **Response to comment LO199-19**

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 develop quantitative thresholds of significance, conduct site-specific quantitative analyses, and 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. Impacts on each of the potentially affected resources areas are analyzed at a program level in Sections 3 through 21 of the EIR. This EIR does, moreover, as the commenter suggests, analyze categories of projects based on completed environmental review documents prepared for each type of project, when available. For example, Suisun Marsh Habitat Management, Preservation, and Restoration Plan EIS/EIR was considered when evaluating potential programmatic impacts associated with wetlands restoration. Please refer to Master Response 2.

The purpose of CEQA is to identify potential environmental effects of projects before the lead agency commits, so that there can be a meaningful discussion. The fact that the EIR is considered a "program EIR" and includes "mitigation" and "alternatives" as required in the statute and regulations should not disguise the fact that it fails to provide a basis for agencies and interested persons to have any real idea of what the environmental consequences of plan adoption might be. ] LO199-20

Thank you for your consideration.

Sincerely,



**John F. Shirey**  
City Manager

Enclosure: September 29, 2011 Comments on the Fifth Draft of the Delta Plan

cc: Darrell Fong, Councilmember, District 7, City of Sacramento, Ad Hoc Water Committee  
Robert King Fong, Councilmember, District 4, City of Sacramento, Ad Hoc Water Committee  
Angelique Ashby, Vice Mayor, District 1, City of Sacramento, Ad Hoc Water Committee  
Jay Schenirer, Councilmember, District 5, City of Sacramento, Ad Hoc Water Committee  
John Woodling, Northern California Water Alliance  
Stan Dean, Sacramento Regional County Sanitation District  
Kenneth Koyama, California Air Pollution Control Officers Association  
Gerald Meral, Ph.D., California Resources Agency (BDCP)  
Pamela Creedon, Central Valley Regional Water Quality Control Board

## **Response to comment LO199-20**

Please refer response to comment LO199-19 and to Master Responses 2 and 4.



Department of Utilities  
Office of the Director

CITY OF SACRAMENTO  
CALIFORNIA

1395 35<sup>th</sup> Avenue  
Sacramento, CA 95822-2911  
phone (916) 868-1400  
fax (916) 868-1498

September 29, 2011  
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Mr. P. Joseph Grindstaff, Executive Officer  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

**Subject: Comments on the Fifth Draft of the Delta Plan**

Dear Mr. Grindstaff:

The City supports the co-equal goals of restoring the ecological health of the Delta and creating a reliable water supply for the State and we appreciate the opportunity to offer comments of the Fifth Draft of the Delta Plan (Plan). We would like to commend the Delta Stewardship Council (DSC) and DSC Staff for the hard work in developing the Plan. Substantial improvements have been made in the various drafts and we appreciate the DSC and Staff engagement in this process. However, the City still has some significant concerns relating to Water Supply, Local Land Use Authority and Fees. We offer the following comments to address these concerns:

**General Comments**

**1. The Delta Plan should provide financing mechanisms that are fair and equitable to stakeholders**

The City supports the beneficiary pays principle identified on pages 205 through 206, provided that the process for determining who the beneficiaries are, and the extent of their benefit, is transparent and thoughtful, and provides all interested parties an opportunity to participate. Similarly, while the principle of "stressor pays" appears equitable at a conceptual level, the Plan lacks adequate information on the scientific basis that would be used to develop "stressor" charges, or the process that would ensure the development of such charges are fairly based on actual impacts to the Delta. In this regard, the last "Guiding Principle" states that "To the extent possible, user fees should be



**No comments**

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## No comments

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based on the amount of water used, or for stressors, the volume of contaminants discharged.” This approach appears to be too simplistic, and does not recognize more detailed factors such as where and when water is diverted and under what water right authority, how much returns to the system after use, what are the contaminants and when are they discharged, to what degree do such contaminants impact the Delta, etc.. To address these concerns, any beneficiary and/or stressor charges must be based on, and proportional to, actual proven benefits or impacts.

Another concern is the Plan’s provision providing no credit against potential Delta charges for “site-specific” expenditures (see page 206, penultimate Guiding Principle). The City sees no reason why expenditures incurred upstream of the Delta that provide actual benefits to the Delta should be disallowed from eligibility for such a credit simply because they can be classified as “site-specific.”

Finally, the Plan does not include any discussion of Proposition 26, which imposes significant new limitations on charges that can be imposed by the State without constituting a “tax”. These limitations could significantly affect the extent to which beneficiary and/or stressor charges can be imposed.

2. **The Plan’s co-equal goals must include water supply reliability for the entire State, not just those who import water.** The Plan indicates that the Bay Delta Conservation Plan (BDCP) will be incorporated into the Delta Plan, and the “Problem Statement” set forth on page 87 of the Plan describes the goal of the BDCP “to promote the recovery of endangered, threatened, and sensitive species and their habitats in the Delta in a way that also improves reliability of water deliveries exported from the Delta watershed.” The City is concerned that improved water supply reliability for areas that receive water exported through the Delta may be achieved at the expense of water supply reliability for areas that do not import water, such as the Sacramento region. The Plan must be developed and implemented in a way that prevents this from occurring and promotes water supply reliability for the entire State.
3. **The Plan should respect the rights of existing water right holders.** Recommendation WR R5 states that proponents requesting a new point of diversion, place of use or purpose of use for water diverted from the Delta watershed should be required to demonstrate that they have evaluated and implemented all other feasible water supply alternatives. It is unclear what “feasible” means in this context, and how this is intended to be applied to existing senior water right holders and/or new water right applicants within the area of origin in a manner that is consistent with the water right priority doctrines, as mandated by State law. The City and other regional water purveyors have made significant ongoing investments in the water supply facilities and infrastructure necessary to develop their senior water rights, and these rights must be respected. Moreover, it is unreasonable to establish a standard that is far more stringent than what CEQA requires, since CEQA allows agencies to reject feasible alternatives based on findings of overriding considerations, such as cost or other factors.

**No comments**

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With respect to diversions upstream of the Delta boundary, the City also requests clarification that such upstream diversions are not "covered actions", even if the upstream diversions could have impacts within the Delta boundary. This has implications throughout the Plan where the applicability of its terms depends on whether or not something is a "covered action."

4. **Some confusion still exists in the Governance chapter of the Plan with respect to covered actions.** The Plan should avoid creating "covered actions" that unnecessarily burden routine development activities inside a City. While the Delta Plan has become clearer with subsequent drafts, some ambiguities and questions still remain. We offer comments in Attachment 1 of this letter that may help the DSC in removing the ambiguity.

Our review of the Plan identified a number of additional concerns, which are presented in Attachment 2 of this letter.

In closing, we once again thank the DSC for the opportunity to make comments. If you have questions or require additional clarification, please contact Jim Peifer at (916) 808-1416.

Sincerely,



Dave Brent  
Interim Director of Utilities

Attachments (2)

**No comments**

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**Attachment 1  
Governance (Chapter 3) Comments**

1. Agencies are required to file a certificate of consistency for all covered actions. Any party may challenge the self-certification that a covered action is consistent with the Delta Plan. However, the procedures do not appear to require a certificate of exemption in which an agency declares that a proposed action is not a covered action. The determination of whether the action is a covered action subject to consistency review with the Delta Plan could be addressed in the CEQA review process. This could also provide the opportunity for modifications to be made to a project to avoid “significantly impacting” achievement of the co-equal goals, and thereby taking the project out of the consistency review requirement altogether.
  - a. What is the process for a 3<sup>rd</sup> party to challenge an agency’s self-determination that an action is not a covered action?
  - b. Is there a way to get assurance from the DSC that an action is indeed not a covered action?
2. It is unclear how a covered action (which is defined by Water Code §85057.5(a) as an action that will have a significant impact on the achievement of the co-equal goals) can also be consistent with the co-equal goals and the Plan policies. It is especially ambiguous how in Policy G P1: “full consistency with *all* relevant policies may not be feasible, but on whole, the covered action can be consistent with the co-equal goals and inherent objectives”; this appears to be a significant judgment call for which little guidance is provided in the Plan.
3. The terms “exemption” and “exclusion” (statutory or expressly excluded by the Plan) appear to be used somewhat interchangeably and without supporting explanations – giving rise to further ambiguity.
  - a. Certain actions are statutorily exempted by the Delta Reform Act of 2009 (see Water Code §85057.5(b)). However, the statute does not explain the purpose of stating that the listed actions are not “covered actions.” It could be that the Legislature determined that the listed actions are not, by their nature, likely to have the four characteristics of a “covered action,” or it could be that the Legislature determined to grant an exemption for policy reasons, regardless of the significance of the impact the actions may have on the Delta Plan’s co-equal goals. Not knowing the reasoning behind the list of actions not covered by the Act casts uncertainty over what is intended to be included as a “covered action.”
  - b. In Chapter 3 under *Administrative Exemptions* the Plan lists three categories of actions that the DSC has determined are not covered actions “because they will not have a significant impact” under Water Code §85057.5(a)(4), meaning because they do not fall within the definition of “covered action.” Two of the three actions listed are taken from the list of statutory exemptions under CEQA, these being ministerial projects and “emergency” projects.

If you have questions or require additional clarification regarding the governance issues, please contact Scot Mende at (916) 808-4756.

**No comments**

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**Attachment 2  
Other Comments**

**Chapter 4 – A More Reliable Water Supply for California**

- P. 81-82: The discussion of article X, section 2 and the Problem Statement does not seem to recognize that determining what is or is not a waste and unreasonable use of water is a fact-based determination that must consider the specific circumstances of any particular situation, and that one should be careful not to make broad brush judgments as to what is or is not a wasteful and unreasonable use. Factors such as climate, topography, return flow and cost/benefit should all be considered before attempting to determine whether or not a particular use of water is violative of article X, section 2.
- P. 82-84: WR P1 requires water suppliers to add a new Water Reliability Element in their UWMP not later than December 31, 2015, and establishes consequences if this is not done. We offer two comments: (1) The addition of mandatory elements to the UWMP should be done by legislative amendment of the UWMP Act, rather than through the adoption of administrative policy; (2) The new Element requires a water supplier to show how it is sustaining and improving regional self-reliance and reducing reliance on the Delta. As the Sacramento region's water supply consists of water diverted from the Sacramento and American Rivers and groundwater, we are assuming that our development of this water supply in an environmentally responsible manner would be considered "sustaining and improving regional self-reliance," but this should be clarified in the Plan.

WR P1 also requires an evaluation of the regional water balance and a requirement to bring the region into balance through the Integrated Regional Water Management Plan. It is not reasonable or feasible to require one water supplier to perform and be held responsible for the outcome of this regional water balance.

Regarding the language relating to conservation-oriented rate structures, this would benefit by a recognition that any such rate structure must comply with Proposition 218 and any other applicable authorities, particularly given the recent Court of Appeal decision in *City of Palmdale v. Palmdale Water District*. Also, given that State law currently allows, but does not require conservation-pricing (provided there is compliance with Proposition 218), it seems that if the intent ultimately is to mandate conservation-based pricing, then this should be addressed by the legislature rather than through the adoption of administrative policy. Any such mandate also should be mindful not to institute a "one size fits all" approach.

## No comments

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- P. 98: Two of the “Outcome Performance Measures” are (1) progress toward increasing local and regional water supplies, and (2) progress in each region in reducing actual or projected reliance on Delta water supplies. For the Sacramento region, would increased surface water diversions be considered as in furtherance of (1), or in contravention of (2)? As noted above, Sacramento’s “local and regional water supplies” consist of diversions from the Sacramento and American Rivers upstream of the Delta boundary, and groundwater.

### Chapter 6 – Improve Water Quality to Protect Human Health and the Environment

- P. 149: Recommendation WQ R8 directs the Central Valley Regional Water Quality Control Board to “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 by January 1, 2014.”

This could lead to costly new WDR/NPDES permit requirements with no commensurate benefit. The City supports the Maximum Extent Practicable (MEP) approach to stormwater management, comprised of iterative implementation of cost-effective, reasonable and practical Best Management Practices. The Sacramento Municipal Separate Storm Sewer Systems (MS4s) are required by the current NPDES Permit to develop standards to implement Low Impact Development strategies which aim to reduce urban runoff associated with development. Reducing runoff volume is an effective way to reduce contaminant loads from urban runoff sources. There are many initiatives and programs (stormwater program, water conservation, etc.) that are currently in progress for reducing urban runoff volume. The feasibility and cost-effectiveness of the recycling and treatment of urban runoff should be evaluated prior to mandating any such requirements in regulatory programs.

The City recommends revising the language for the WQ R8 as follows: “The Central Valley Regional Water Quality Control Board, consistent with existing Water Quality Control Plan policies and water rights law, should require responsible entities that discharge wastewater treatment plant effluent or urban runoff to Delta waters to evaluate, by January 1, 2014, the feasibility of whether all or a portion of the discharge can be recycled, otherwise used, or treated as an alternative approach in order to reduce contaminant loads to the Delta ~~by January 1, 2014.~~”

- Recommendation WQ R9: In this recommendation, the State Water Board and Regional Water Board are directed to “conduct or require special studies of pollutants including selected emerging contaminants and causes of toxicity in Delta waters and sediments by January 1, 2014”.

Special studies have been required in every MS4 permit in the State for various pollutants of concern and for BMP effectiveness evaluation. The State Water Board and Regional Water Board need to streamline regulatory requirements to reduce redundancy and improve program efficiency. These special studies should be conducted with regional and collaborated efforts led by the State or Regional Board. Also any timeline should be realistic.

**No comments**

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The City recommends revising the language for the WQ R9 as follows: "The State Water Resources Control Board and/or Regional Water Quality Control Boards should ~~conduct or require~~ be the lead agency for developing a work plan and conducting regional special studies of pollutants including selected emerging contaminants and causes of toxicity in Delta waters and sediments by January 1, 2014."

**Chapter 9 – Finance Plan Framework to Support the Coequal Goals**

- P. 211: The discussion of user fees states that the Legislature should authorize the DSC to develop and apply user fees. It is unclear whether this is recommending that the DSC be given blanket authority to adopt and impose fees, so that there would be no requirement for the Legislature to actually adopt fees after they are developed, but before the fees can take effect. The City strongly believes that no fees should take effect until such fees, as well as the fee amounts, are approved by the Legislature.

This section of the Plan also recommends that the Legislature adopt legislative amendments to allow local agencies to assess fees under Proposition 218. It bears noting that the Legislature cannot amend Proposition 218, nor can it amend Proposition 26 adopted by California voters in 2010. As previously noted, Proposition 26 imposes significant new limitations on charges that can be imposed by the State without constituting a "tax", and any proposed user fees should be considered with these limitations in mind.

- P. 212: The proposed Public Goods Charge faces the same requirements under Proposition 26.