

LO226 EID

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In reply refer to: L2012-006

February 1, 2012

Delta Stewardship Council
980 Ninth Street, Suite 1500
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VIA FEDERAL EXPRESS

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DELTA COUNCIL
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Attn: Terry Macaulay

Re: Comments on Draft Environmental Impact Report (DEIR) for Fifth Draft Delta Plan

Dear Chair Isenberg and Councilmembers:

El Dorado Irrigation District appreciates this opportunity to comment on the above-named DEIR. Unfortunately, our comments are not supportive. Although the sheer bulk of facts and figures contained in the document is impressive – and no doubt useful as a reference source – we find that the DEIR does not provide substantive analysis sufficient to meet the requirements of the California Environmental Quality Act (CEQA) for program-level documents. LO226-1

The source of the problem is the DEIR's analytical approach. On one topic after another, the DEIR's analysis unfolds as follows: 1) The Delta Plan will have no direct environmental impacts (because the Council itself will take no actions to implement the Plan); 2) It will have various indirect impacts (because the Plan's policies and recommendations will spur actions by others that will affect the environment); 3) The magnitude of those indirect impacts generally cannot be assessed (because few specific implementing projects have yet been proposed); 4) Based on past EIRs for similar-type projects, implementing projects could be expected to have various specified types of impacts; 5) Certain industry-standard mitigation measures are typically used to ameliorate the identified impact types; those mitigations shall be included in covered actions and should be adopted in all other actions; and 6) Notwithstanding these generic mitigation measures, the generic expected impacts should be treated as significant because there is no way to prove that they will not be. (See, for example, DEIR pages 2B-1 to 2B-3, 3-76 to 3-93, 4-58 to 4-86, 18-30 to 18-48.) LO226-2

Response to comment LO226-1

Please refer to Master Response 2.

Response to comment LO226-2

Please refer to Master Response 2.



The DEIR characterizes this approach as “conservative.” A more apt description is “generic.” Rather than seriously grappling with the Delta Plan’s likely environmental consequences, this analytical approach amounts to writing a syllabus for future project-specific environmental documents. Rather than “tiering” environmental review as CEQA encourages, the DEIR is deferring impact analysis, which CEQA forbids. The resulting product is an encyclopedia or almanac, not an environmental impact report.

LO2226-2

Aside from this overarching defect, the District perceives other more specific deficiencies, omissions, and errors in the document, as discussed below.

The DEIR’s Assumptions of Environmental Benefits and Impact Offsets are Unwarranted

The Delta Plan and DEIR assume that a vast array of Plan implementation actions will occur, bringing with them environmental benefits and offsets to adverse environmental impacts created by other aspects of the Plan. (See page ES-7.) This optimistic assumption is unwarranted. As discussed immediately below, there is no basis to assume that sufficient new water developments will simply materialize to offset the Plan’s adverse impacts to water supply adequacy and reliability, much less to enhance water supplies beyond current conditions. The same is true of the assumed actions that are intended to directly enhance the Delta ecosystem, improve water quality, reduce flood risk, and enhance the Delta as a place: there is no reason to believe that they will all occur. CEQA requires the DEIR to make realistic assumptions, even if they are adverse to the Plan’s objectives, rather than simply hoping for the best.

LO2226-3

Water Supply Reliability Continues to be Slighted

A mandatory subject of the Delta Plan is “Measures to promote a more reliable water supply that address,” among other things, “Meeting the needs for reasonable and beneficial uses of water.” (See page 1-2.) This topic has received short shrift in all Delta Plan drafts to date, and the DEIR perpetuates the pattern. Where it is addressed, the DEIR assumes – without rationale, and contrary to the last four decades of California’s water resource development history – that new water supplies will automatically be developed to offset supply decreases that result from higher instream flow standards and other environmental restoration policies and recommendations included in the Delta Plan. (See, for example, pages 3-82, 3-84 to 3-85.)

LO2226-4

As a result, the DEIR draws the startling and unsupported conclusions that under the Delta Plan, “the total water supply available would remain the same or increase as compared to existing conditions,” and “there is no substantial evidence that this [water supply] impact would be significant” because it is impossible “to identify a reasonably plausible scenario in which a potential significant impact would occur.” (Page 3-85.) The DEIR accordingly fails to assess the

Response to comment LO226-3

Regarding the local regional water supply projects encouraged under the Delta Plan, and their ability to meet demand, please see Master Response 5. As explained in Master Response 2, the EIR’s analysis of the Delta Plan’s adverse environmental impacts assumes that it will be successful. The EIR, however, does not directly analyze the Delta Plan’s ability to meet its objectives, as further explained in Master Response 3.

Response to comment LO226-4

The EIR acknowledges that the reduced availability of Delta water may cause the conversion of agricultural land to other uses (DPEIR at 7-27). Master Response 5 discusses this and other potential water-supply impacts of the Delta Plan. The Reliable Water Supply subsection of sections 3 through 21 analyzes the impacts of the development of local and regional water supplies.



potential impacts of reduced or less reliable water supplies in such topical areas as water resources, agriculture and forestry resources, land use and planning, population and housing, public services, recreation, and cumulative impacts. Nor does the DEIR analyze, other than generically, the potential environmental impacts of the projects necessary to develop substitute water supplies.

Finally, the DEIR's generic analysis of those activities makes no attempt to distinguish among potential sources of new supply by geographical location. In mountainous and largely rural area-of-origin service areas like the District's, surface water storage, reservoir reoperation, and water use efficiency and water recycling are potentially feasible means of augmenting water supply. Groundwater, conjunctive use, desalination, water transfers, and stormwater capture, however, are not. And the District's already extensive water use efficiency and water recycling programs limit the amount of additional gains to be obtained through those means. The DEIR neither analyzes nor even addresses these factors.

LO226-5

Both Chapter 3 and Chapter 22 (Cumulative Impacts) of the DEIR need to be modified to provide a CEQA-compliant analysis of adverse water supply impacts.

The Analysis of Flow Modification Impacts is Incomplete

Mirroring the assumption that new water supply developments will offset the Delta Plan's impacts on water supply adequacy and reliability, the DEIR postulates that increased instream flow requirements will have negligible or beneficial biological resource impacts (page 4-69:10-15), and that the same is true of increased streamflows resulting from reservoir reoperation, transfers, or water use efficiency. (Page 4-62:24-28, 31-34.) This also represents incomplete analysis. First, it reflects an unscientific assumption that more flow is always better. Second, inconsistent with the rest of the document, this portion of the DEIR appears to limit its study area to the Sacramento River watershed downstream of the large dams, rather than the entire Delta watershed. (Page 4-39:27-28 *et seq.*) Therefore, the analysis does not consider the potential impacts of altered streamflow regimes upstream of the major dams, such as in the District's service area.

LO226-6

Third, there is no analysis of the potentially adverse impacts that water-use efficiency measures may have on the aquatic environment from retimed, reduced, and lower-quality return flows to streams. Rather, the DEIR chooses to focus exclusively on expected improvements to the Delta environment. (Page 4-68.) Fourth, the DEIR fails to consider the indirect impacts of altered streamflow regimes on farmland and forestland. The DEIR repeatedly identifies the conversion of farmland and forestland to non-agricultural or non-forest uses as potential impacts of the Delta Plan (pages 7-19 to 7-21, 7-26 to 7-27, 7-30 to 7-31, 7-33 to 7-34, 7-36 to 7-37, 7-39 to 7-40, 7-42 to 7-43, 7-45 to 7-46, 7-48 to 7-51), but in none of those analyses does it identify altered streamflow regimes as a potential source of those impacts. It should; although it is an

LO226-7

Response to comment LO226-5

The EIR recognizes that different approaches to local and regional supply development will be optimal in different geographical areas. For example, it explains on page 3-2 of the Recirculated Draft PEIR that recycled water projects are more likely than groundwater projects in Delta watershed areas, as the commenter notes.

Regarding the EIR's analysis of water supply impacts, please see the preceding responses to comments and Master Response 5.

Response to comment LO226-6

The "more natural flow regime" encouraged by the Delta Plan does not necessarily entail "increased instream flow requirements." Instead, as further discussed in Master Response 5, such a flow regime would come closer than current conditions to the natural hydrograph, the ecological context in which native species evolved. The EIR reasonably relies on scientific literature in concluding that this would benefit such species.

The project area considered in the EIR is defined by the purposes and uses of the Delta Plan. The project area, shown in Figure 1-1, includes the Delta, the Delta watershed that contributes water to the Delta, and areas outside of the Delta that use Delta water. This area was defined to include the areas of possible impacts of each alternative, as described in Section 2A, Introduction to Resource Sections. The EIR's analysis of impacts to biological resources includes discussion of impacts upstream of major dams, when such impacts are foreseeable results of projects encouraged under the Delta Plan. For example, on page 4-62 the Draft PEIR discusses the impacts of reoperation on "wetlands and riparian communities along the edges of [upstream] reservoirs."

Response to comment LO226-7

The water made available by water-use efficiency programs could be used in a number of ways. It could be used for instream flow or for other diversionary uses that provide return flow. In either of these cases, there would not be a significant reduction in the quantity or quality of water available to aquatic habitat. Alternatively, the water saved by efficiency programs could be used for increased consumptive uses, such as providing water for population growth within current general plan parameters. This use of the "saved" water is among the strategies for local and regional self-reliance encouraged by the Delta Plan. The EIR considers the impacts

of these strategies in the Reliable Water Supply subsection of sections 3 through 21. The particular impacts of water-use efficiency programs will vary substantially among the individual agencies implementing them. The EIR could not quantify or provide program-specific analysis without inappropriate speculation, as discussed in Master Response 2.

The EIR acknowledges that the reduced availability of Delta water may cause the conversion of agricultural land to other uses, a significant and unavoidable environmental impact. DPEIR at 7-27.



indirect impact, the fallowing or conversion of farmland and forestland is a predictable consequence of the decrease in water supply adequacy and reliability that higher instream flow requirements will foreseeably cause.

Fifth, the DEIR does not consider the impacts that altered streamflow regimes will have on recreation. The DEIR acknowledges that changes in reservoir water flow patterns and levels will adversely impact recreation, but ascribes this impact only to the water supply enhancement projects anticipated under the Plan. If the Plan increases instream flow requirements downstream of existing reservoirs, however, the reservoirs will store less water overall and will release more at different times of the year. These operational changes will also adversely affect recreation, but the DEIR neither acknowledges nor analyzes this impact. Further, altered streamflow regimes may adversely affect whitewater recreation, including boating on the South Fork American River in El Dorado County, which is the most-used recreational stream in the western United States. Yet the DEIR barely acknowledges whitewater recreation at all (see pages 18-24 to 18-25), and it does not even mention whitewater recreation in the South Fork or Lower American rivers.

Sixth, there is no analysis of the foreseeable impacts that altered stream flow regimes will have on hydropower generation, by limiting reservoir storage and requiring flows at times and in magnitudes that cannot be beneficially used for power generation. The District generates critically important, state-certified “green,” renewable electric power with its Project 184 on the South Fork American River system. Project 184 provides a third of our drinking water today, and will provide half or more of it in the near future. It also produces millions of dollars in annual revenue that helps keep that drinking water affordable for our customers. The DEIR must analyze the foreseeable environmental and related economic impacts of altered streamflows on the sufficiency and costs of public drinking water supplies.

Unless these many omissions are addressed, the DEIR’s analysis of flow modification impacts is incomplete and inadequate.

The Cursory Discussion of Utility Impacts Does Not Meet CEQA Standards

In sharp contrast to other chapters, Chapter 20’s analysis of utility impacts is only 22 pages long. One reason for its relative brevity is that it excludes virtually all utilities outside of the Delta and its immediate vicinity from its analysis – its 11-line description of the Delta Watershed’s environmental setting does not come close to meeting CEQA standards. (See page 20-6.) Likewise, the DEIR avoids analyzing impacts of the Plan on water and wastewater utilities by confining its impacts analyses to the water/wastewater needs of projects constructed under the Plan, and by assuming that those projects will occur in rural areas that supposedly are not typically served by municipal utilities. (Pages 20-8 to 20-10.) This assumption is at odds

LO226-7

LO226-8

LO226-9

LO226-10

Response to comment LO226-8

As explained in Master Response 5, any altered Delta flow regime is likely to take into account existing needs and uses throughout the system. Moreover, EIR recognizes that “[c]hanges in Delta export patterns related to quantities or timing of Delta exports can change the volume of water in the local reservoirs, and thereby affect the ability to use the reservoir for boating and other aquatic recreational opportunities,” and concludes that this is a significant and unavoidable impact of the Delta Plan (RDPEIR at 18-3).

Response to comment LO226-9

Please refer to Master Response 5.

Response to comment LO226-10

The EIR correctly notes that most rural areas in the Delta watershed, but outside the Delta, are not served by municipal utilities, although the commenter points out an exception. The projects encouraged by the Delta Plan are unlikely to induce significant new demand for municipal utility services, as they will not include large permanent workforces or induce significant population growth.



with the facts. The District is just one of many water/wastewater utilities that serve predominantly rural territories. The DEIR should analyze this issue fully, rather than assuming away its CEQA duties.

Further, Chapter 20 is silent on an important aspect of the Delta Plan – the encouragement of policies, including more restrictive requirements on wastewater treatment plants and “stressor pays” fees, to reduce Delta stressors and enhance water quality. (See pages 2A-22, 2A-24, and 2A-44.) These actions would induce new and modified wastewater treatment facilities, but Chapter 20 does not address or assess the potential environmental impacts of these foreseeable actions, much less the associated economic impacts to agencies like the District. CEQA requires this analysis.

The DEIR Contains Errors Regarding the District

The District cannot vouch one way or another for the accuracy of the vast majority of factual statements in the DEIR, but we did note several errors relevant to our facilities and operations. They should be corrected, as follows:

- Page 3-22 states that the District serves 1,600 homes with recycled water. The correct number as of 2010 is 3,630 homes.
- The same page states that the District produces over 1 billion gallons of recycled water per year. The correct quantity as of 2010 is 672 million gallons.
- Page 3-25 states, “The only major water supply facilities in the Cosumnes River watershed are components of the Sly Park Unit of the CVP. The water supply provided by the Sly Park Unit is used by EDID and is not integrated into the CVP operations.” The District purchased the Sly Park Unit from the United States in 2003. Therefore, these sentences should be replaced with the following text: “The only major water supply facility in the Cosumnes River watershed is Sly Park Reservoir, which is owned and operated by EDID.”
- Page 4-46 states that the Cosumnes River has no major dams. Although this is a true statement for the mainstem river, as noted above, Sly Park Reservoir provides on-stream storage of tributary waters within the Cosumnes River watershed.
- At page 18-22, Table 18-7 lists Sugar Pine Reservoir and Sly Park Reservoir as reservoirs of the Central Valley Project. These listings are incorrect and should be deleted. As indicated above, since 2003 Sly Park Reservoir has not been a CVP reservoir and has been owned and operated by the District. It is our understanding that Sugar Pine Reservoir was similarly purchased by Foresthill Public Utility District at about the same time. Also, limiting Tables 18-7 and 18-8 to CVP and State Water Project reservoirs omits many other major recreational reservoirs in the Delta watershed.

LO226-10

LO226-11

LO226-12

LO226-13

LO226-14

LO226-15

Response to comment LO226-11

The Water Quality Improvement subsections of EIR sections 3 through 21 evaluate the potential impacts of constructing new treatment plants for municipal wastewater and stormwater and agricultural runoff. As discussed in Master Response 2, economic impacts are not effects on the environment under CEQA, and are not analyzed in the EIR (CEQA Guidelines §§ 15064(e) and 15131).

Response to comment LO226-12

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

Response to comment LO226-13

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

Response to comment LO226-14

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

Response to comment LO226-15

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



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The District appreciates this opportunity to comment on the DEIR. We look forward to substantial revisions to address the many deficiencies identified on these comments, as well as those of other participants, including the Association of California Water Agencies, the Mountain Counties Water Resources Association, the North State Water Alliance, and Placer County Water Agency.] LO226-16

Sincerely,

A handwritten signature in blue ink, appearing to read "Thomas D. Cumpston".

Thomas D. Cumpston
General Counsel

TDC:pj

cc: EID Board of Directors
Jim Abercrombie, EID General Manager
Brian Poulsen, EID Deputy General Counsel
Bob Reeb, Reeb Government Relations
John Woodling, North State Water Alliance
John Kingsbury, Mountain Counties Water Resources Association

Response to comment LO226-16

Comment noted.