

OR103 CVCWA



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Via email

Phil Isenberg, Chairman and Council Members
Delta Stewardship Council
980 Ninth Street, Suite 1500
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eircomments@deltacouncil.ca.gov

Attn: Terry Macaulay

SUBJECT: Comments on the Delta Plan Draft Environmental Impact Report

Dear Mr. Isenberg:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to provide comments on the Delta Stewardship Council's Draft Environmental Impact Report (DEIR). CVCWA is a nonprofit association of Publicly Owned Treatment Works (POTWs) throughout the Central Valley whose primary mission is to represent wastewater agencies in regulatory matters while balancing environmental and economic interests. CVCWA members have a deep commitment to the protection of beneficial uses in the waters of the Central Valley, and have a special interest in the recovery of the Delta ecosystem. Many of CVCWA's members will be directly impacted by the Delta Plan and have a considerable interest in its development and implementation. In general, CVCWA is concerned with the adequacy of the DEIR for the Fifth Staff Draft of the Delta Plan.

OR103-1

I. The Project Description in the DEIR Is Inadequate and Fails to Articulate the True Environmental Impacts of the Proposed Project

As a preliminary matter, CVCWA finds the project description in the DEIR to be incomplete and insufficient to comply with the mandates of the California Environmental Quality Act (CEQA). Specifically, the DEIR fails to provide CVCWA, our members, and others with an adequate understanding of what the Delta Plan is intended to do, and what the public can expect as a

OR103-2

Response to comment OR103-1

Comment noted.

Response to comment OR103-2

Regarding the EIR's project description, please refer to Master Response 1. Regarding the analysis of the proposed Delta Plan and the alternative's respective abilities to meet the project objectives, please refer to Master Response 3.

result of Delta Plan adoption. Without an accurate and complete project description, stakeholders and those affected by the Proposed Project are unable to adequately evaluate the actual impact of the policies and recommendations in the Delta Plan on the environment. On the one hand, the DEIR asserts that the Delta Plan is a legally enforceable, comprehensive management plan for the Delta. (DEIR, p. 2A-1.) However, the DEIR also characterizes the Delta Plan as being comprised of "regulatory policies" and "non-binding recommendations," which are merely policy directions to other agencies that "could lead to other types of specific physical action." (DEIR, p. ES-2, emphasis added.) Further, the DEIR states that the "Delta Plan does not direct the construction of specific projects, nor would projects be implemented under the direct authority of the Delta Stewardship Council." (DEIR, p. 3-85.) Accordingly, the DEIR appears to indicate that the Delta Plan, in and of itself, will not mandate any physical changes in the environment. If that is true, then it is uncertain how the Delta Plan will actually achieve its goals. This lack of information regarding how the Delta Plan will affirmatively achieve the project objectives prevents CVCWA and others from being able to fully analyze the environmental impacts of the Proposed Project. In addition, if the policies and recommendations in the Delta Plan are merely speculative and will not necessarily result in any physical actions, it is unclear how the Proposed Project will achieve any more quantifiable benefits than the No Project Alternative.

OR103-2

The Project's general concept that stressor "reduction," at any level, will produce net positive outcomes is also problematic, as projects required on the basis of "stressor reduction" may, in fact, provide little benefit to beneficial uses. The DEIR states that, "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." (DEIR, p. ES-7.) 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. The DEIR's failure to include an adequate project description prevents any analysis with respect to environmental impacts of the Project, which is implementation of the Delta Plan.

OR103-3

In addition, the production of a DEIR prior to the establishment of performance measures for implementation of the Delta Plan makes the actual environmental impacts of the Proposed Project extremely difficult to ascertain, and thus nearly impossible to comment on. Specifically, the Delta Plan is required to include quantified or otherwise measurable targets associated with achieving the objectives of the Delta Plan. (Wat. Code, § 85308(b).) However, the Plan still contains no such quantifiable or otherwise measurable targets. This makes it incredibly difficult for those who will be affected by the Delta Plan to ascertain how the Council intends to accomplish this mandate, what types of performance measures are being considered, when these targets will be adopted, and as it relates to the DEIR, how the Council intends to comply with CEQA in adopting the required targets. The project description in the DEIR fails to discuss these required targets and the DEIR fails to evaluate the potential impacts associated with these targets, rendering it impossible for the affected community to know what the true impacts of the Delta Plan will be.

OR103-4

Response to comment OR103-3

Please refer to Master Response 3.

Response to comment OR103-4

The Final Draft Delta Plan, the environmental impacts of which are analyzed in the Recirculated Draft PEIR, includes performance measures.

II. The DEIR Fails to Establish the Environmental Benefits of Increased Wastewater Treatment, and Fails to Account for Potential Adverse Environmental Impacts of Such Actions

The DEIR presumes that the Proposed Project (Delta Plan implementation) will create long-term ecosystem benefits, as a matter of course. One stated component of the Project is to encourage and influence more restrictive requirements on various source categories, including wastewater treatment facilities. Specifically, the DEIR states that “[t]he Delta Plan . . . seeks to influence, either through limited policy regulation or through recommendations, other agencies to take certain actions that will lead to achieving the dual goals of Delta ecosystem protection and water supply reliability. Project may include . . . wastewater treatment plants . . .” (DEIR, p. 4-1.) However, the DEIR fails to quantify or establish the asserted benefits of increased wastewater treatment beyond the currently permitted levels or how those actions would contribute to the achievement of the dual goals, and fails to provide a complete analysis of the operational impacts of those projects. The benefits of “stressor reduction,” as a general concept, are implied, but not articulated or specifically defended. These issues need to be addressed in the DEIR.

As one example, the DEIR infers that installation of state-of-the-art reverse osmosis (membrane) treatment at wastewater treatment facilities is a plausible/desired outcome of the Delta Plan. (DEIR, pp. 2A-44, 4-74.) However, the DEIR fails to address the well-understood and significant adverse environmental impacts of membrane treatment, which include dramatically increased energy use and greenhouse gas impacts, as well as the long-term commitment of community resources required by such treatment. The DEIR also states that recycled wastewater projects encouraged by the Delta Plan may include modification of existing wastewater treatment plants to add filtration, membrane filtration, reverse osmosis, and/or disinfection. (DEIR, pp. 2A-22, 2A-44.) Membrane treatment and reverse osmosis are not commonly applied in recycled water projects because of the exorbitant capital and energy costs associated with such levels of treatment. Thus, the DEIR is incomplete in its assessment of the net environmental impact (i.e., intended benefits versus certain adverse environmental impacts) of specific actions, such as membrane treatment. The Delta Plan must identify the significant environmental impacts and energy requirements of such extreme levels of treatment to avoid reckless encouragement of these wastewater treatment options. Without performing such an analysis, the DEIR fails to accurately characterize the true environmental tradeoffs between the benefits that are asserted to be achieved by the Proposed Project and the impacts of the individual projects that are presumed to create those benefits.

OR103-5

Moreover, the DEIR improperly implies that inadequate wastewater treatment is causing contamination of surface water and/or ground water in many areas of the Central Valley. (DEIR, p. 2A-44.) As a general statement, this implication is both unsupported and inaccurate. The DEIR also states that wastewater treatment “could improve drinking water and environmental quality,” though this generalized statement is not supported by findings of fact in the DEIR. In fact, reports prepared for the Drinking Water Policy Work Group and posted on the Central Valley Regional Water Quality Control Board’s website contain information that contradicts this statement. A technical report prepared for the Drinking Water Policy Work Group (West Yost, 2011) provides a current assessment of loadings from existing and planned wastewater treatment plants in the Central Valley, and shows that future wastewater treatment plant loadings of organic carbon and nitrogen compounds will be *less* than current loadings, despite population growth. This report is highly relevant, contradicts the statements highlighted above, and should be reviewed and cited in the DEIR. In addition, a report prepared for the Drinking Water Policy

Response to comment OR103-5

Section 21 of the EIR considers the greenhouse gas-related impacts of the operation of recycled water facilities, along with other types of projects that the Delta Plan would encourage to further water supply reliability and water quality (DEIR at 21-11, 21-20; RDEIR at 21-4, 21-16). It determines that quantification of operational emissions would be too speculative at this program level because of unknown project details, localized variables, and operational considerations, and that the potential impact is significant and unavoidable. Sections 3 through 21 of the EIR addresses the potential impacts of construction and operation of the advanced treatment, including membrane filtration and desalination of the recycled water, ocean or brackish water, or contaminated groundwater, and indicates that the potential impacts could be significant. The EIR does not analyze economic impacts. The reference to drinking water quality in Section 2A of the EIR is related to drinking water quality in disadvantaged communities, as addressed in the Delta Plan in recommendation for Issues for Future Evaluation and Coordination.

Work Group by Malcolm Pirnie in 2011 indicates that Delta drinking water uses are not adversely impacted by current ambient organic carbon or pathogen levels in the Delta.

III. The No Project Alternative in the DEIR Is Internally Inconsistent and Not Supported by Substantial Evidence

The DEIR's discussion of the No Project Alternative is internally inconsistent and contradicted by evidence in the DEIR itself. For example, the DEIR states that under the No Project Alternative, "drinking water quality would continue to be impaired in communities in the Delta and areas outside the Delta" and that the "[i]mplementation of additional local and regional water treatment facilities may not be reasonably expected to occur in the foreseeable future under the No Project Alternative based on current plans and available infrastructure." (DEIR, p. 2A-88.) However, there is no evidence or analysis cited in support of these conclusions. In fact, these statements are directly contradicted by information in the DEIR itself. Specifically, other provisions of the DEIR cite the ongoing efforts of the State and Regional Water Boards to develop more stringent and comprehensive water quality objectives. (DEIR, pp. 2A-40 - 2A-43.) These ongoing efforts are recognized in the numerous sections of the DEIR and the Delta Plan, and many wastewater treatment facilities that discharge into the Delta are already in the process of planning for or constructing upgraded treatment facilities. Thus to assert, as the No Project Alternative does, that drinking water will "continue to be impaired" and water treatment facility upgrades and construction would not be expected to occur in the absence of the Proposed Project is contrary to the weight of evidence before the Council.

IV. The DEIR Fails to Adequately Discuss the Alternatives

The DEIR provides an overview of Alternatives 1A and 1B in the executive summary, but unfortunately, Alternatives 1A and 1B do not achieve the co-equal goals of ecosystem protection since they would result in an increase in Delta exports from the system. As noted in the August 2010 SWRCB Delta flow criteria report, the Delta ecosystem will be better sustained by an increase in flow through the Delta through actions that include a reduction in current and recent past Delta export volumes. Alternatives such as 1A and 1B, which increase exports from the system, should be considered to be fundamentally invalid in that they fail to achieve one of the co-equal goals. Moreover, there are sub-alternatives to Alternative 2 that may be more feasible/reasonable than the other described alternatives. For instance, the specific means to address habitat or flood control measures can be disconnected from measures to decrease Delta exports, as each measure can be undertaken separately. (See DEIR, p. ES-6.) The DEIR analysis of this alternative should de-couple these elements in order to reflect this reality.

In addition, many of the statements regarding Alternative 2 are incorrect and not supported by substantial evidence. Specifically, the DEIR executive summary states that Alternative 2 is "environmentally inferior" to the Proposed Project because it would result in the greatest amount of water supply uncertainty and agricultural land losses due to restrictions on the total amount of water to be exported from the Delta. (DEIR, p. ES-8.) However, water supply uncertainty and potential agricultural land losses, in and of themselves, are not "environmental impacts" and should not be treated as such in the DEIR. First, it is premature and speculative to state that Alternative 2 would result in the greatest amount of "water supply uncertainty." This statement is not necessarily true, since any certainty or uncertainty in water supply will depend on the clarity of Delta flow objectives and their implementation. Second, the DEIR alleges that Alternative 2 would result in the "loss of agricultural land," and that agricultural land is an environmental

Response to comment OR103-6

As described on page 2A-67 and Section 2.3.2 of the Draft Program EIR and as required by CEQA Guidelines section 15126.6(e), the No Project Alternative, consists of the environment if no Delta Plan is adopted and assumes that existing relevant plans and policies would continue. The No Project Alternative also includes physical activities and projects that are permitted and funded at this time. The analysis of the No Project Alternative in Sections 3 through 21 of the DEIR and RDEIR assumes all of these conditions. The No Project Alternative does not include future projects that would require future studies, environmental documentation, or permitting, including projects encouraged by the proposed Delta Plan or one of the alternatives.

Response to comment OR103-7

Please refer to Master Response 3.

Response to comment OR103-8

Please refer to Master Response 3.

Response to comment OR103-9

The EIR's thresholds of significance are based on Appendix G to the CEQA Guidelines. Appendix G's thresholds include XVI(d): "Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?" This was modified for the present EIR, as the Delta Plan is not a project that would be served by a water supply. Instead, it may impact suppliers' ability to provide water for existing projects. Thus, the EIR considers whether the Delta Plan would "substantially change water supply availability to water users that use Delta water." The thresholds in Appendix G, section II, Agricultural Resources, are used essentially in the form they are provided in Appendix G with only minor changes in wording.

Regarding the EIR's analysis of Alternative 2 and the determination of the environmentally superior alternative, please see Master Response 3. Mitigation measures have been identified in Sections 3 through 21 to reduce adverse impacts of construction and operation of water, wastewater, and stormwater treatment systems

resource under CEQA. (DEIR, p. ES-9.) A reduction of Delta exports and reduced water supply to an area does not impact the existence or future use of the land that *might* have received that supply. The use of land for agricultural production may change based on a wide variety of factors, including cropping patterns or economic viability of specific parcels of the land. Third, it is alleged that Alternative 2 would result in fewer redundancies in the water supply system and thus water users could be without sufficient water during droughts. (DEIR, p. ES-9.) This conclusion improperly presumes that Delta supplies are the only source of redundancy, which is not the case. While Delta supplies may currently be the most economical source of such redundancy, this circumstance may have limited the exploration of other sources, which could serve as viable sources of supply during drought periods. The DEIR should recognize that Alternative 2 may not result in fewer redundancies in the system, and thus may have less of an impact on backup water supplies. Finally, Table ES-1 (DEIR, pp. ES-10 - ES-56.), the Summary of Impacts and Mitigation Measures for Proposed Project, only addresses short-term water quality impacts associated with construction. The table mentions that the Proposed Project could "require or result in" the construction and operation of new or expanded water, wastewater, and storm water treatment systems, but fails to analyze or include mitigation measures for the impacts of such requirements.

OR103-9

V. The DEIR Contains Numerous Misstatements With Respect to Other State Policies and Guidelines

In addition to its failings to comply with the principles of CEQA, the DEIR also makes incorrect reference to other state policies and guidelines. For example, the DEIR states that "[t]he types of projects to reduce stressors can best be seen by looking at the recommendations in the Conservation Strategy for Restoration of the Sacramento-San Joaquin Delta Ecological Management Zone and the Sacramento-San Joaquin Valley Regions." (DEIR, p. 2A-36.) The word "draft" was left off this statement, and the DEIR fails to properly identify that this is still a draft document. The Department of Fish & Game (DFG) is still in the process of reviewing comments and making changes to the final document; as such, the Delta Plan should not rely on its content.

OR103-10

In another example, the DEIR incorrectly states that current Central Valley Regional Water Quality Control Board (Central Valley Water Board) policies and plans "do not include strategies to effectively protect drinking water." (DEIR, p. 2A-41.) In fact, the results of the technical investigations by the Drinking Water Policy Work Group indicate that drinking water uses are being effectively protected in the Delta based on an assessment of current and future ambient levels of organic carbon and pathogens. The DEIR also incorrectly identifies the date of initiation of the Drinking Water Policy Work Group process as 2008. In fact, the process began in 2002. Finally, the 2010 Regional Water Board resolution referenced in the DEIR was not describing a new process; it referred to actions and deadlines to develop a Drinking Water Policy that were associated with the Work Group process initiated in 2002.

OR103-11

In addition, the DEIR erroneously asserts that, under the No Project Alternative, conditions related to a variety of factors, including water quality, would "continue to degrade." (DEIR, p. 2A-67.) The DEIR does not contain any support for this assessment that water quality is deteriorating, and should provide citations to the ambient data analysis that was used as the basis for this statement. This should also include references to specific water quality parameters. Without such additional information, the DEIR's conclusory assertion that water quality will "continue to degrade" is inappropriate and should be modified or eliminated.

OR103-12

Response to comment OR103-10

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

Response to comment OR103-11

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

Response to comment OR103-12

Existing water quality conditions are discussed in Section 3 of the Draft Program EIR.

VI. The DEIR Fails to Adequately Discuss the Impact of Diversions on the Delta Ecosystem and Fails to Acknowledge the Impact of Known Stressors on the Effectiveness of Proposed Actions

The section of the DEIR addressing biological resources (Chapter 4) contains several accurate statements regarding impacts to the Delta ecosystem from invasive species and diversions, though there is insufficient analysis of a number of the issues raised, and in some instances failure to acknowledge how existing impacts affect the viability of proposed actions. For instance, the DEIR correctly states that two clam species from Asia currently dominate the benthos of Suisun Marsh and the Delta and alter habitat suitability, consume vast volumes of primary and secondary producers, and alter species composition and the food web structure. (DEIR, p. 4-7, citing Lund et al., 2007, p. 71.) However, the DEIR does not properly articulate or address the consequences of that situation. The DEIR should acknowledge that these observed significant impacts in Suisun Bay create a limit on the effect that ammonium, nutrients, or other stressors may have in Suisun Bay, and the viability/necessity of several proposed actions should be adjusted accordingly. OR103-13

As another example, the DEIR states that, "net flows in the southern Delta have strong north-to-south directionality (toward the CVP and [SWP] South Delta export pumps) . . ." (DEIR, p. 4-7), and also that "current flow conditions favor resident freshwater invasive organism such as largemouth bass and Brazilian waterweed." (DEIR, p. 4-7, citing Moyle et al., 2010b, p. 14.) However, the DEIR does not indicate whether and how the Delta Plan will address these impacts. The DEIR should acknowledge whether the future Delta Plan will remedy these effects which may significantly impact the realization of the co-equal goals of ecosystem protection. OR103-14

The DEIR also acknowledges that significant entrainment and export of vital biological materials will continue to occur as a result of the Delta Plan, but does not contain an analysis or evaluation of the significance of these impacts. Specifically, the DEIR states that ". . . large numbers of fish are lost to the CVP and SWP water export facilities located in the South Delta . . ." as a result of the ". . . entrainment effects caused by the Banks and Jones pumping plants." (DEIR, p. 4-8.) The DEIR also notes that the 110 million fish that were salvaged over a 15-year period ". . . greatly underestimates the actual number of fish entrained" and that "diversions may also create conditions that increase the risk of predation by trapping fish in diversion forebays." (DEIR, p. 4-8.) However, the DEIR should also reference the findings of studies by Castillo (2009) and Kimmerer (2011) (both attached hereto) which confirm that pre-screen predation greatly outweighs the fish lost at the screening facilities and in the salvage operations. The DEIR states that the CVP and SWP water export facilities and other diversions export phytoplankton, zooplankton, nutrients, and organic material that would otherwise contribute to supporting the base of the food web in the Delta. (DEIR, p. 4-8, citing Jassby and Cloern, 2000, p. 348.) However, the DEIR does not sufficiently evaluate the impact of these diversions. The DEIR must attempt to evaluate the significance of these effects, since these indirect effects on the Delta ecosystem that result from continued CVP and SWP diversions will persist under the Delta Plan. OR103-15

The DEIR makes the generalized statement that contaminants have been identified as "an important driver of declines in ecosystem function in the current Delta and Suisun Marsh." (DEIR, p. 4-9.) However, there is no citation to the reference for this statement, and no acknowledgement that contaminants are but one potential driver of declines in ecosystem function. This statement should be modified to indicate that contaminants have been identified OR103-16

Response to comment OR103-13

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

Response to comment OR103-14

The Delta Plan includes Ecosystem Restoration Policy (ER P5) which states: "The potential for new introductions of, or improved habitat conditions for, nonnative invasive species must be fully considered and avoided or mitigated in a way that appropriately protects the ecosystem." The EIR analyzes the Delta Plan's significant adverse impacts on the environment. It provides a general description of the existing conditions in Sections 3 through 21 of the DEIR including declining conditions in the Delta, such as invasive species in Section 4, but does not analyze the impacts of current operations and programs there, except as part of the No Project alternative, as discussed in Master Response 1.

Response to comment OR103-15

Please refer to response to comment OR103-14.

Response to comment OR103-16

While it is true that much more is known about the impacts of habitat loss and entrainment than is known about the effects of toxic chemicals, the USFWS (2008a) identifies contaminants as one of the factors affecting Delta smelt. Other factors identified include water diversions and reservoir operations, changes in the Delta food web, microcystis, climate change, and "other stressors" such as aquatic macrophytes, predators, and competition.

as but one of a number of stressors that may be impacting the Delta ecosystem, but that the importance to ecosystem function has not been established. In addition, in the listing of "primary threats to delta smelt, the DEIR includes stressors with known impacts (habitat loss, entrainment in South Delta export facilities) in combination with stressors with potential impacts (toxic chemicals). (DEIR, p. 4-16.) However, the DEIR does not distinguish between observed and potential impacts. This is an important distinction that should be clarified in the DEIR.

OR103-16

The DEIR also describes numerous actions and projects that "could improve water quality," which may include "implementation of plans/programs that lead to reduced constituents from agricultural runoff and wastewater treatment plants." (DEIR, p. 4-72.) However, the reduction in constituent loadings over and above current permitted loadings will not, in and of itself, necessarily result in (a) significant changes in ambient water quality, (b) improved protection of ecosystem health, (c) improved protection of beneficial uses, or (d) net environmental benefit, when the environmental impact of new or increased treatment is considered in comparison to the benefit of a reduction in loadings. The DEIR fails to acknowledge these facts in its analysis of the environmental impacts of the various actions and projects that the Delta Plan seeks to encourage. The DEIR does acknowledge that the projects encouraged by the Proposed Project (e.g., construction of new wastewater treatment plants) could result in substantial adverse effects that are considered to be significant. (DEIR, p. 4-73.) However, the DEIR fails to describe mitigation to be performed by the proponents of the Proposed Project to offset these significant impacts. Such mitigation must be described in the DEIR. Finally, the DEIR states that operation of facilities intended to improve water quality such as discharges from wastewater treatment plants or the discharge of brine waste are not expected to produce significant impacts, since such discharges will be regulated by the State and Regional Water Boards. (DEIR, p. 4-74.) However, the DEIR fails to address the significant operational impacts associated with greenhouse gas emissions, power use, and chemical use associated with the use of membrane treatment in Central Valley wastewater treatment plants. These impacts must be addressed in the DEIR in order to provide an accurate and complete picture of how the operation of such facilities will ultimately impact the environment.

OR103-17

The DEIR specifies that any covered action that would have one or more of the significant environmental impacts listed in section 4 of the DEIR "shall incorporate" mitigation measures as described in section 4.4.3.6. (DEIR, p. 4-82.) This statement appears to seek to transfer responsibility for any projects encouraged by the Proposed Project to local communities, including the burden of demonstrating that such projects are reasonable, cost-effective, or otherwise create a net environmental benefit. This apparent transfer of the responsibility for mitigation of the adverse environmental impacts of membrane treatment and other projects to local communities, rather than the Council taking responsibility for such mitigation as the Project proponent, is inappropriate.

OR103-18

VII. The DEIR Fails To Identify Appropriate Mitigation Measures For Continued Use of South Delta Export Pumps

According to the DEIR, in order to meet the goals, continued use of the South Delta pumps into the future will need to occur. However, the DEIR fails to identify mitigation measures for the continued use of the South Delta. Such continued use will occur under any of the alternatives considered, and is recognized to have caused significant long-term impacts (losses far exceeding the 110 million fish that were "salvaged" in the Delta pump fish screening facilities in a 15-year period). Significant losses above the "salvage" number occurred due to entrainment, pre-screen

OR103-19

Response to comment OR103-17

The Delta Plan's ability to advance the project objectives is discussed in Master Response 3. Mitigation measures that could be utilized on future projects are included in Sections 3 through 21 of the EIR. Impacts of recycled water facilities related to greenhouse gas emissions, energy, and cumulative impacts are addressed in Sections 21, 24, and 22, respectively.

Response to comment OR103-18

Please refer to Master Responses 4.

Response to comment OR103-19

The EIR addresses impacts of the Proposed Project and the alternatives as compared to the existing conditions. The EIR does not offer mitigation measures for continuation of the existing conditions.

Response to comment OR103-20

Please refer to Master Response 1.

predation, and salvage operations during past operation of the state and federal water projects. Implementation of a north Delta intake under the Bay Delta Conservation Plan (BDCP) is not sufficient mitigation for the significant loss of fish that will continue to occur in the South Delta, since exports from the South Delta are projected to continue, representing the vast majority of water exported by the state and federal projects. Moreover, mitigation in the DEIR for the continued operation of the South Delta pumps must also address 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, other water quality impacts, and adversely impact the Delta food web.

OR103-19

VIII. The DEIR Contains an Insufficient Discussion of How the BDCP Will Impact Implementation of the Delta Plan

There is an important interplay between the implementation of Delta Plan and requirements of the BDCP, if ultimately adopted and incorporated into the Delta Plan. Unfortunately, the DEIR does not clearly articulate how the incorporation of the BDCP into the Delta Plan will change its scope and regulatory effect, and contains no discussion of the resultant environmental impacts. The absence of any significant discussion of the BDCP makes it unclear to CVCWA and other affected entities how the regulatory effect of the BDCP will change if it is incorporated into the Delta Plan, and more specifically whether provisions of the BDCP would be considered "policies" of the Delta Plan and thus subject to consistency determinations. The DEIR indicates that this would be the case, noting that "[i]f BDCP is incorporated into the Delta Plan, it will become part of the Delta Plan and, therefore, part of the basis for future consistency determinations." (DEIR, p. 2A-24.) However if this occurs, then the BDCP's incorporation into the Delta Plan would dramatically expand the scope of both Plans. The DEIR's brief discussion of the BDCP in section 23 fails to discuss how the BDCP will be used for future consistency determinations, and what the environmental impacts associated with that circumstance will be.

CEQA requires that an EIR evaluate the whole of the action that will be approved, including the reasonably foreseeable indirect physical changes to the environment that will occur from the project. The BDCP, to the extent that it must be incorporated into the Delta Plan, should be treated as a reasonably foreseeable future element of the Project. The DEIR does not treat it as such. The DEIR should provide a full and complete discussion of the BDCP in the project description, and should evaluate the impacts of the BDCP as part of the Project and all alternatives. Without such a description, the DEIR fails to adequately describe the actual scope of the Proposed Project and cannot provide an adequate discussion of its environmental impacts. The lack of information in the DEIR regarding the regulatory and environmental consequences of incorporating the BDCP into the Delta Plan makes it impossible for the public to evaluate and understand the environmental consequences of adoption of the Delta Plan. The DEIR must be revised so that the project description and impacts analysis clearly and thoroughly explain the scope of the Plan with respect to the BDCP and evaluate the resulting environmental impacts, and must be revised to fully explain the BDCP's role in the Delta Plan and the type and significance of environmental effects that will occur if all covered actions are required to comply with the BDCP. In addition, 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 BDCP or the BDCP EIR.

OR103-20

IX. The DEIR Fails to Include Delta Plan Policies in the Body of the Document, Impacting the Ability of Affected Entities to Understand the Impacts of Those Policies

The DEIR states that the primary effects of the Plan will result from agencies implementing the 12 Plan policies that will have regulatory effect. (DEIR, pp. ES-1, 2A-1.) However, the DEIR does not list these policies in the body of the DEIR. Rather, they are effectively buried in an appendix to the DEIR, Appendix C. The California Supreme Court has stated that essential elements of CEQA analyses cannot be buried within the appendices. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412.) CEQA requires that the information in an EIR be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project. Thus, the failure to include the 12 Delta Plan policies in the project description or other relevant sections of the DEIR makes it difficult for affected entities to understand the nature of the Project and its potential environmental impacts. The DEIR should be revised to include the 12 Delta Plan policies in the body of the document itself.

OR103-21

X. The DEIR Indicates Projects Undertaken to Implement Regulatory Actions of Other State Agencies May Not be Exempt From Consistency Determinations

The DEIR contains statements indicating that the Proposed Plan will involve dual regulation of certain actions taken as a result of regulatory actions of other state agencies, a situation that will result in unnecessary delay in the implementation of projects that would have a positive impact on the environment. While the Delta Plan excludes certain activities from the definition of a covered action, including regulatory actions by other state agencies, it also states that the underlying actions regulated by those agencies would not be exempt. (DEIR, pp. 2A-2 - 2A-4.) Thus, the exemption is seemingly ineffective. This apparent failure to exempt projects undertaken to implement regulatory requirements, such as wastewater treatment plant upgrades necessitated by a NPDES permit issued by the Regional Water Quality Control Board, may have significant adverse consequences for these projects. Entities implementing regulatory requirements of other state agencies will be required to prepare detailed findings of consistency with the Delta Plan, and environmentally beneficial projects will inevitably be delayed. Such delays are unreasonable, counterproductive, and will have adverse environmental impacts that are not discussed in the DEIR. Instead of subjecting such actions to consistency determinations that will result in additional cost and unreasonable delay, the Delta Plan should do everything possible to facilitate and encourage projects that implement regulatory requirements. 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, and at a minimum acknowledge and discuss the adverse environmental impacts that would result from not granting such an exemption.

OR103-22

XI. Information About the Financing of Delta Plan Projects Is Necessary to Understand the Feasibility of the Proposed Project in Relation to DEIR Alternatives

The DEIR fails to address the Finance Plan within the Delta Plan, noting only that "[t]he Finance Plan Framework relies upon other agencies to authorize or to establish mechanisms for the development of funding and/or collection of funds, steps which would not result in changes in physical conditions in the environment in addition to those that are already discussed and analyzed in this EIR." (DEIR, p. 2-56.) While the Finance Plan itself may not directly impact the

OR103-23

Response to comment OR103-21

Section 2A describes the Delta Plan in sufficient detail for the EIR's program-level analysis. The EIR is not required to include the entire Delta Plan.

Response to comment OR103-22

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

Response to comment OR103-23

Please refer to Master Response 2.

physical environment, information regarding the Finance Plan is critical to understanding the feasibility of the Proposed Plan, particularly as it relates to the alternatives in the DEIR. The assumption built into the Finance Plan and only superficially referenced in the DEIR is that entities identified as "stressors" will be successful in procuring funding for Plan projects. Given the realities of Proposition 218 and the existing scarcity of funds for such projects, such an assumption is highly questionable. The DEIR should disclose the important elements of the Finance Plan, discuss the likelihood that funding will be available for such projects, and address the timing of any such funding. Without this information, the public cannot understand the relative feasibility, and thus merits, of the Project and the alternatives.

OR103-23

XII. There Are No Adopted Water Quality Objectives for Methylmercury

Footnote f in Table D-1 of Appendix D implies that 0.06 ng/l MeHg has been adopted as an enforceable water quality objective in the Delta Mercury TMDL Basin Plan amendment. This statement is inaccurate and the table should be modified to clarify that this value has no regulatory effect and clearly is not an adopted water quality objective.

OR103-24

XIII. Conclusions

CVCWA appreciates the work of the Delta Stewardship Council and staff in assembling this DEIR in support of the Delta Plan. CVCWA members are communities with a strong track record of environmental protection in the Central Valley and in the Delta. We are supportive of a Delta Plan that is strategic and effective in resolving the major problems that are impairing the Delta ecosystem. However, we remain concerned that the DEIR contains deficiencies that prevent members of the public from adequately understanding the true environmental impacts of the Proposed Project, and believe that a number of the statements contained in the DEIR are not supported by substantial evidence. The DEIR contains an incomplete project description, an inaccurately characterized no project alternative, and an inadequate discussion of the remaining alternatives. Moreover, the DEIR fails to account for major changes in scope that may be brought about by incorporation of the BDCP into the Delta Plan, and fails to acknowledge or analyze the environmental tradeoffs between the perceived benefits to be achieved by the Proposed Project and the adverse environmental impacts of individual projects (e.g., state-of-the-art wastewater treatment facilities) that are intended to create those benefits. These issues need to be thoroughly addressed before the DEIR can be considered adequate under CEQA.

OR103-25

Response to comment OR103-24

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

Response to comment OR103-25

Please refer to the preceding responses.

Mr. Phil Isenberg
CVCWA Comments on Delta Plan EIR
February 2, 2012

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We look forward to working with the Council and staff in the future to assist in the resolution of issues raised in this comment letter. Please feel free to contact me if you have additional questions or concerns.

Sincerely,



Debbie Webster,
Executive Officer

Attachments

cc: Pamela Creedon, CVRWQB (via email)

:cr

No comments

- n/a -