

OR104 CWA



February 2, 2012

Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814
Attn: Terry Macaulay

RE: Comments on Fifth Draft Delta Plan Environmental Impact Report (EIR)

Dear Chairman Isenberg and Council Members:

The California Waterfowl Association (CWA), a nonprofit organization dedicated to the conservation of California's waterfowl, wetlands and hunting heritage, would like to take this opportunity to provide input on the Delta Stewardship Council's fifth draft Delta Plan EIR.

OR104-1

First, please note that the Delta Plan is statutorily required to address waterfowl habitat needs. Section 85302 (e) (6) of the Water Code mandates, as part of its subgoals and strategies, that the Delta Plan "Restore habitat necessary to avoid a net loss of migratory bird habitat and, where feasible, increase migratory bird habitat to promote viable populations of migratory birds."

In addition, Section 85302 (c) states that "The Delta Plan shall include measures to promote all of the following characteristics of a healthy Delta ecosystem:

- (1) Viable populations of native resident and migratory species.
- (2) Functional corridors for migratory species.
- (3) Diverse and biologically appropriate habitat and processes."

The Sacramento-San Joaquin Delta, along with the adjacent Suisun Marsh, historically provided key habitat for migratory and resident waterfowl. Despite significant changes in land and water use over the last 150 years, conservation efforts by nonprofits like CWA, state and federal resource agencies, farmers and other private landowners have helped protect and even enhance the Delta and Suisun Marsh's overall waterfowl habitat values. In fact, the Delta and Suisun Marsh of today still support millions of migratory birds while also providing important wildlife-dependent recreational opportunities for the public—chiefly hunting and wildlife viewing.

OR104-2

The land use and conservation efforts most responsible for the Delta and Suisun Marsh's contemporary benefit to ducks, geese and other migratory birds are managed wetlands and associated uplands, as well as wildlife-friendly farming practices. Managed wetlands offer critical winter foraging habitat, while also providing important late winter/spring breeding areas for waterfowl. Upland fields adjacent to managed wetlands are also a key component to waterfowl nesting success. Post-harvest corn fields, as well as some rice cultivation, additionally provide critical food resources for migrating waterfowl and shorebirds throughout much of the Delta. The Delta Plan should support these ongoing conservation efforts.

It should also be noted that managed wetlands, due to the ability of wetland managers to precisely control the flooding and manipulation of the land, tend to be amongst the most biologically productive of all wetland types. Recognizing that California has lost over 90 percent of its original wetlands, it is critical that those wetlands which remain are as productive as possible through biologically proven, active manipulation and management activities.

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Response to comment OR104-1

Comment noted.

Response to comment OR104-2

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

Conversely, the tidal wetlands targeted for restoration under the Delta Plan—while used by some diving duck species as wintering habitat—unfortunately offer only limited food resources overall for waterfowl and generally less quality waterfowl breeding habitat than either managed wetlands or pre-harvest, flooded agricultural lands.

With that background, please consider the following comments:

- The draft Delta Plan’s legally enforceable Policy ER P2 states “that habitat restoration actions must be consistent with the habitat type locations based on elevations shown on the elevation map in Figure 5-2 page 117, and accompanying text shown in Appendix D.”

This has the potential to severely limit habitat creation and opportunities, particularly as it relates to managed wetlands and associated upland habitat, since most of the habitat type locations specified on the elevation map within the Suisun Marsh and Delta are labeled as “intertidal” or “subtidal”. It should also be noted that the Fifth Draft of the Delta Plan defines “habitat restoration” as tidal, riparian and floodplain restoration, and does not specifically include managed wetlands or upland nesting habitat as part of that definition.

- The draft Delta Plan’s Policy ER P3 states, “Actions other than habitat restoration, including new or amended local or regional land use plans, shall demonstrate that they have, in consultation with the Department of Fish and Game, avoided or mitigated within the Delta the adverse impacts to the opportunity for habitat restoration at the elevations shown in Figure 5-2.”

Again, this policy places unnecessary restrictions on land uses which may be beneficial to waterfowl and other wildlife, such as the cultivation of corn or rice. Seasonal managed wetland activity or agricultural practices that have the potential to cause oxidation or reduce peat soils, for instance, could be considered inconsistent with ER P3 and deemed as not a covered action.

- All actions that meet the requirements of Section 85057.5(a) of the Water Code are covered actions unless the action: 1) falls with the statutory exclusions found in Section 85057.5(b) of the Water Code or 2) is expressly excluded by the Delta Plan.

Section 85057.5(b) states that a covered action does not include “Routine maintenance and operation of any facility located, in whole or in part, in the Delta, that is owned or operated by a local public agency.” Page 54 of the draft Delta Plan also states that “Routine agricultural practices are unlikely to be considered a covered action unless they have significant impacts on the achievement of the coequal goals.”

Many of the levees which protect and support managed wetlands in the Delta and Suisun Marsh are maintained by local districts, while managed wetlands themselves require routine maintenance and operation activities in order to optimize habitat values. Routine agricultural activities include the flooding of post-harvest rice and corn fields for decomposition purposes, which greatly benefit migratory waterfowl and other birds and are supported by the Department of Fish and Game’s policies. Managed wetland activities, as well as post-harvest flooding of rice and corn, should appropriately be considered covered actions because they provide high quality migratory bird habitat, which (as noted above) the Delta Plan is statutorily required to support.

- The impacts implementation of the Delta Plan’s current draft policies—particularly on the Suisun Marsh—will have significant direct and indirect physical changes in the

OR104-2

OR104-3

OR104-4

OR104-5

OR104-6

Response to comment OR104-3

This is a comment on the project, not on the EIR. Policy ER P2 has been amended in the Final Draft Delta Plan to refer to specific conservation strategy guidance and Delta Plan Figure 4-5 for determining appropriate habitat restoration actions. RDEIR, Appendix C, Table C-11, p. C-6 and Attachment C-8; Final Draft Delta Plan, p. 156, Figure 4-5, and Appendix H.

Response to comment OR104-4

This is a comment on the project, not on the EIR. Policy ER P3 has been amended in the Final Draft Delta Plan to require significant impacts on opportunities to restore habitat in the areas identified in Policy ER P2 to be avoided or mitigated. RDEIR, Appendix C, Table C-11, p. C-7; Final Draft Delta Plan, p. 157. Please refer to response to comment OR104-3.

Response to comment OR104-5

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

Response to comment OR104-6

The impacts of the proposed Delta Plan on biological resources, including wetlands, natural communities, and fish, wildlife and plant species, are discussed in Section 4 of the EIR. 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. 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 and to identify program-level mitigation measures. Impacts on each of the potentially affected resources areas are analyzed at a program level in Sections 3 through 21 of this EIR. 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.

environment. The following environmental consequences have not been considered, disclosed, or analyzed in the draft EIR and must be addressed:

1. The loss, conversion, or degradation of existing seasonal managed wetland habitats from the implementation of the Council's Policies on the changes in seasonal managed wetlands operations and maintenance.
2. The loss, conversion, or degradation of existing wildlife species diversity, abundance and presence in the Suisun Marsh from the implementation of the Council's Policies on the changes in seasonal managed wetlands operations and maintenance.
3. Reduction in existing waterfowl species composition, abundance, and distribution wintering food source availability and loss.
4. Reductions of wintering waterfowl carrying capacity within the Suisun Marsh, including impacts and loss of resident breeding and migratory waterfowl populations, raptors, water birds, and terrestrial wildlife species.
5. Impacts and loss of wetland plant communities in the managed wetlands supporting the endangered Salt Marsh Harvest Mouse.
6. The economic and social impact of changes in existing Suisun Marsh habitats and salinity regimes that could change existing waterfowl hunting and the financial viability of continued wetland conservation activities.

- The draft Delta Plan's focus on a "more natural flow regime" threatens to curtail water diversions for managed wetlands and wildlife-friendly agriculture that depend heavily on surface water supplies, such as Sacramento River flows. This includes National Wildlife Refuges and State Wildlife Areas (many of which a part of the Central Valley Project Improvement Act's Refuge Water provisions), duck clubs and other privately owned wetlands, and lands under rice cultivation. As the draft EIR states, "Under the Proposed Project, the SWRCB would be encouraged to modify Delta flow objectives in order to place more emphasis on creating a natural flow regime in the Delta. Such objectives would likely reduce the amount of water available for municipal, agricultural, and industrial water uses within the Delta and outside the Delta..."

A "more natural flow regime" in the Delta would require reductions in upstream water storage, which, in turn, would affect the availability of critically-needed water supplies for waterfowl habitat. The draft EIR fails to fully analyze and mitigate for this significant effect to the environment.

Thank you for the opportunity to comment. I applaud the Council and its staff's efforts to meet the co-equal goals of a more reliable water supply and protection and enhancement of the Delta ecosystem while balancing the needs of a diverse array of stakeholders. Should you have questions about our input or need additional information, I may be reached at jcarlson@calwaterfowl.org or (916) 648-1406.

Sincerely,



John Carlson, President
California Waterfowl Association

Response to comment OR104-7

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.

The Delta Plan encourages the SWRCB to complete the updated Bay-Delta Water Quality Control Plan flow objectives. However, only the SWRCB has authority to set those objectives. The Delta Plan and the EIR therefore cannot project what those objectives will be. The Delta Plan and the sources it cites (including especially the SWRCB's 2010 Flow Criteria Report) explains that the flow objectives that best advance the coequal goals will be those that bring about more natural functional flows within and out of the Delta. See Delta Plan, pp. 136 to 142, 155, and sources cited therein. The EIR thus assumes, consistent with CEQA, that the SWRCB will adopt updated objectives that will advance such a flow regime. The general assumption of a more natural flow regime is sufficient for the EIR's programmatic approach. The impacts of the flow objectives are analyzed in greater, quantitative detail, in the SWRCB's *Public Draft Substitute Environmental Document in Support of Potential Changes to the Water Quality Control Plan for the San Francisco Bay-Sacramento/San Joaquin Delta Estuary: San Joaquin River Flows and Southern Delta Water Quality* (December 2012). See Master Response 5 for further discussion.

The environmental setting (baseline) for the analysis in this EIR consists of the existing conditions at the time of the publication of the Notice of Preparation of this EIR in December 2010, which is the normal CEQA environmental baseline pursuant to CEQA Guidelines section 15125(a). Sections 3 through 21 and Appendix D of the DPEIR describe the existing environmental and regulatory conditions relevant to the resource under

discussion, including CVPIA. The Environmental Setting and Regulatory Framework for the DPEIR are unchanged in the RDPEIR. The EIR's analyses assume that Delta water operations will comply with existing requirements, including firm water supplies for Central Valley wildlife refuges and wildlife habitat areas mandated by the CVPIA.

Response to comment OR104-8

Comment noted.