

OR90 ACWA



Association of California Water Agencies
Leadership Advocacy Information Since 1910

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Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, California 95814

Delivered via eircomments@deltacouncil.ca.gov

Re: Draft Program Environmental Impact Report for the Delta Plan

Dear Chairman Isenberg and Council Members:

The Association of California Water Agencies (ACWA) submits the following comments on the behalf of the Ag-Urban Coalition (Coalition) regarding the Draft Program Environmental Impact Report (DPEIR) for the fifth draft Delta Plan (draft plan). The Coalition is a diverse group of public water agencies, cities, associations, and agricultural and business interests located above, within, and below the Bay-Delta. A list of the Coalition members is attached to these comments. The Coalition is committed to the achievement of the coequal goals of improved statewide water supply reliability and the restoration of a sustainable Delta ecosystem while protecting and enhancing the unique cultural, recreational, natural resources and agricultural values of the Delta as an evolving place.

OR90-1

The Coalition has provided comments to the Delta Stewardship Council (Council) on the numerous drafts of the Delta Plan. In June 2011, the Coalition submitted an alternate Delta Plan (Alternate Plan) to the Council. The Alternate Plan is intended to provide constructive input as the Council and your staff continues to refine the draft plan. The Coalition was initially pleased to learn that the Council decided to include the Coalition's Alternate Plan as one of the alternatives to be evaluated during the development of the DPEIR. Unfortunately, the Coalition's Alternate Plan has been mischaracterized in the DPEIR, and consequently, the subsequent environmental analysis does not reflect either the intent or content of the alternate plan.

OR90-2

As discussed in the detailed comments that follow, the Coalition has serious concerns with the DPEIR. From our perspective, the DPEIR's analysis of the draft Delta Plan's impacts is so flawed that the DPEIR cannot provide a legally adequate basis for the Council to consider adopting that draft plan. The Ag-Urban Coalition is prepared to work with your staff in the hope that we can resolve our concerns as work continues on the sixth and seventh drafts of the Delta Plan so that it can fulfill the Delta Reform Act's direction that the final Delta Plan help California move forward towards achievement of the coequal goals.

OR90-3

Response to comment OR90-1

Comment noted.

Response to comment OR90-2

Please refer to Master Response 3.

Response to comment OR90-3

The Revised Draft PEIR analyzes the environmental impacts of the Final Draft Delta Plan, which the Council will consider for approval.

1. The DPEIR does not analyze the environmental impacts of the proposed project or alternatives in the context of achieving the project's primary objectives.

The Sacramento-San Joaquin Delta Reform Act of 2009 established the Delta Stewardship Council and charged the Council with developing a Delta Plan to achieve the coequal goals of "providing a more reliable water supply for the state of California and protecting, restoring and enhancing the Delta ecosystem." California Water Code §85054. The achievement of the coequal goals is the project's [Delta Plan] primary objective. See the DPEIR at page ES-3, "for purposes of this Draft Program EIR, the project objectives are...[a]chievement of the coequal goals...."

Unfortunately, the DPEIR fails to provide any analysis as to how the proposed project would actually achieve the coequal goals. See the DPEIR at page ES-1, "[t]he degree to which the alternatives meet the "project objectives"... or are "feasible", as defined in CEQA [California Environmental Quality Act], will be assessed by the Council... following the release of this draft program EIR, but prior to consideration of final adoption of the Delta Plan." In other words, the DPEIR acknowledges that the Council has not assessed in the DPEIR how the proposed project or any of the alternatives will achieve the project's primary objectives – improving statewide water supply reliability and restoring a sustainable Delta ecosystem. The DPEIR confesses that such an evaluation^{OR90-4} by the Council is presumed to take place at a later date.

This is a crucial legal failing. The purpose of CEQA is for a public agency to identify the purpose of the project, describe how the project would achieve that purpose, describe the potential effects of the project on the environment, and compare those effects with alternative measures that would achieve the purpose of the project with lesser/reduced effects on the environment. A clear identification of the basic objectives of the project and the manner in which the project would achieve those objectives is the very foundation of the analysis required by CEQA. The Council may not, therefore, defer discussion of the manner in which the project would or would not meet the purposes of the project until after the public review of the DPEIR.

More importantly, it would be tragic, if after all of the time, resources and effort that have been invested in the Delta Reform Act and the Council's work, the final Delta Plan were little more than a collection of ideas that are not woven together by clear explanation of how they will achieve the coequal goals. We encourage the Council to direct your staff and consultants to refocus their efforts on developing a coherent and cohesive analysis and explanation as to how the Delta Plan will actually further achievement of the coequal goals.

2. The DPEIR inaccurately portrays the Coalition's Alternate Plan.

The DPEIR states that "development of this alternate [Alternative 1B] was informed by a proposal from the Agriculture/Urban Coalition." Id. at page ES-5. Emphasis added. Also see page C-43, "Alternate 1B was developed based in large part upon the Draft Alternate Delta Plan. Emphasis added. The DPEIR then concludes that the Council's^{OR90-5}

Response to comment OR90-4

Please refer to Master Response 3.

Response to comment OR90-5

Regarding the development and selection of the range of alternatives considered in the EIR, please refer to master Response 3. The sentence quoted in the comment refers to Alternative 1B's "reduced conservation and water efficiency measures" as compared to the Proposed Project, not to existing conditions. Regarding the EIR's approach to the analysis of environmental impacts, please refer to Master Response 2.

version of the Coalition's Alternate Plan (Alternative 1B) promotes the "export of more water out of the Delta; reduced conservation and water efficiency measures; only voluntary actions by state and local agencies; coordination not regulation; [and a] large number of additional studies before action." Id. at page 2A-68.

While the Council's version of the Alternate Plan may contain proposals to reduce water conservation or water-use efficiency, it is simply false to imply that the Coalition's actual Alternate Plan contains such proposals. We do not suggest that there should be a reduction from the achievement of the statutory goal to reduce per capita water consumption by 20 percent by the year 2020 ("20x2020" water conservation policy) or any other existing water conservation/water-use efficiency requirement. The only basis for comparison offered up in the DPEIR is to some unquantified greater amount of water conservation that the draft Delta Plan supposedly would achieve. To use an unquantified and unsubstantiated estimate as the basis for measuring environmental impacts and consequently concluding that one alternative is environmentally superior is arbitrary and capricious.

We acknowledge that the Coalition's Alternate Plan – which lays out dozens of short-, medium- and long-term actions – calls for numerous studies, but it is a mischaracterization of the Coalition's Alternate Plan to imply that a large number of the studies must be completed before the Council, or any other agency, takes any action to advance the coequal goals. To the contrary, ACWA recently submitted comments to the California Department of Pesticide Regulation supporting the Department's proposed regulations to control pesticide runoff associated with structural applications of pyrethroid-based pesticides. ACWA also submitted comments to the California Fish and Game Commission supporting fishing regulations designed to bring about a more balanced striped bass population to reduce the impacts of striped bass predation of listed fish species in the Delta. In both cases, we supported the regulations because there was an adequate scientific basis for the proposals. That is not necessarily the case for many of the actions proposed for the Delta. In many cases additional studies are warranted. A careful review of the Coalition's Alternate Plan will reveal that many actions – short-term, medium-term, and longer-term – are proposed to begin and continue along a comprehensive, integrated pathway to achieve the coequal goals. What the Alternate Plan does recognize is that for many of those actions, we all have the greatest likelihood for success if they are based on objective science, monitoring and modification, as warranted.

The Coalition's Alternate Plan provides a programmatic approach designed to efficiently and effectively advance the coequal goals. Absent any effort by the DPEIR to evaluate the relative likelihood that the proposed project and the Coalition's Alternate Plan will achieve the coequal goals, the Council has little grounds for assessing the merits of the proposed project or the alternatives. The Coalition's Alternate Plan provides a blueprint for a comprehensive, integrated approach to achieving the coequal goals – one that is designed around a systematic evaluation of the various factors (stressors) that are contributing to the degradation of the Bay-Delta ecosystem so that we can have a better understanding of the environmental relationships amongst those factors. As a result, we believe that the Coalition's Alternate Plan will provide a better basis than the proposed

Response to comment OR90-6

Please refer to Master Response 3.

Response to comment OR90-7

Please refer to Master Response 3.

project for the Council and other local, state, and federal agencies with statutory and regulatory responsibilities in the Delta to more accurately assess the environmental and economic tradeoffs associated with various proposed actions and thereby more efficiently and effectively leverage limited resources.

Contrary to the conclusions laid out in the DPEIR, the Coalition's Alternate Plan does not rely only on voluntary actions by state and local agencies. As pointed out above, we have supported regulatory action when research and scientific evaluation has demonstrated that such actions are warranted. What our Alternate Plan does promote, in lieu of another regulatory layer, is for the Council to improve coordination and integration of actions amongst the 200+ agencies with responsibilities in the Delta. This lack of coordination is one of the critical weaknesses in the current management of the Delta ecosystem, and we believe it is one of the primary reasons the Legislature created Delta Stewardship Council. OR90-7

A more accurate portrayal of the Coalition's Alternative Plan would be one that offers a programmatic comprehensive approach to achieve the coequal goals that is based on integrated, scientific analysis.

3. The DPEIR does not provide any in-depth, quantifiable environmental analysis of the proposed project.

By its own admission, the DPEIR lacks any quantitative analysis. The justification for the lack of any quantitative analysis is that the proposed project is programmatic and contains no specific actions to evaluate. Consequently, there is nothing to quantify. To the contrary, we believe the DPEIR could realistically provide a more objective, quantitative analysis of the proposed project and compare it to the alternatives. Other agencies, most notably the U.S. Bureau of Reclamation in preparing the Programmatic Environmental Impact Statement for implementation of the Central Valley project Improvement Act and CALFED Bay-Delta Program, have prepared similar programmatic documents with ample quantitative analysis. OR90-8

For example, the DPEIR must give sufficient consideration to potential environmental impacts outside the Delta associated with the activities contained in the proposed project and the alternatives. The proposed project proposes a policy that the State Water Resources Control Board (SWRCB) should accelerate the adoption of new flow objectives and criteria that would implement a "more natural flow regime". The DPEIR emphasizes the point, citing the proposed project's acceleration of a "more natural flow regime" as a key difference between the proposed project and the project alternatives. Yet the DPEIR lacks any significant discussion and analysis as to what is meant by a "more natural flow regime" or what the potential indirect and cumulative environmental impacts associated with implementing such a recommendation may have on natural resources outside the Delta. Millions of dollars have been invested outside the Delta to improve aquatic habitat during various life cycle stages for listed species. The DPEIR contains no discussion as to the potential adverse impacts of a "more natural flow regime" on critical aquatic habitat characteristics outside the Delta that may result from OR90-9

Response to comment OR90-8

Please refer to Master Response 2.

Response to comment OR90-9

Please refer to Master Response 5.

a significant increase in flows for the Delta and an asserted need to concurrently reduce the availability of export supplies. Furthermore, there is no recognition, much less discussion, in the DPEIR as to potential indirect impacts on other resources not directly associated with the Delta or aquatic ecosystems. For example, the DPEIR is silent with regards to potential reductions in hydropower production that may result from a significant increase in flows for the Delta. And what that might mean in terms of increased greenhouse gas emissions associated with an increased reliance on other energy sources that have higher levels of carbon emissions and what that might mean with regards to air quality.

OR90-9

The DPEIR's failure to analyze the impacts of the proposed acceleration of a "more natural flow regime" cannot be due to a lack of available data. The administrative record for the SWRCB's 2010 Delta flow criteria report contains a great deal of hydrologic modeling demonstrating the potential impacts of at least some variations of "more natural flow regimes". All of that information has long been available on the SWRCB's web site.¹ The DPEIR fails to recognize and consider this best available information concerning the impacts of what the DPEIR acknowledges is one of the proposed project's key elements.

Absent a more in-depth, quantifiable environmental analysis of the potential direct, indirect and cumulative effects associated with the proposed project, we do not believe that the Council can make a fully informed decision as to the environmental impacts associated with the proposed project.

OR90-10

4. There is no rational basis for concluding that the proposed project is environmentally superior to the Coalition's alternate plan.

Given that the DPEIR does not evaluate the relative likelihood that the proposed project or the project alternatives will achieve the coequal goals, and given that the DPEIR fails to fully consider and analyze any of the potential environmental impacts of the proposed project to environmental resources outside the Delta, the conclusion in the DPEIR that the proposed project is environmentally superior to the Coalition's Alternate Plan is, at best, premature. The manner in which the DPEIR assesses the project alternatives, namely, by comparing their effects to an assumed future in which the proposed project achieves the coequal goals with little explanation of how the project's various proposed policies and recommendations might actually cause that result is arbitrary and capricious, and not supported by substantial evidence. The proposed project, in fact, may have limited success towards achieving the coequal goals. Consequently, the potential environmental impacts assumed for the proposed project, as set forth in the DPEIR, may be significantly understated or irrelevant when it comes to actually implementing the final Delta Plan. Given the lack of any in-depth quantitative analysis in DPEIR despite the availability of pertinent information – such as the hydrologic modeling in the SWRCB's Delta flow criteria record – we believe the conclusion that the proposed project is environmentally superior to the Coalition's Alternate Plan is an arbitrary conclusion. The Coalition strongly believes that if the proposed project and the

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¹ See http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/
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Response to comment OR90-10

Please refer to Master Response 2.

Response to comment OR90-11

Please refer to Master Response 3.

Coalition's Alternate Plan were to analyzed in the context of concurrently achieving the coequal goals, the DPEIR could reasonably conclude that the Coalition's Alternate Plan provides a more realistic approach to achieving the coequal goals, and in a manner that has less direct, indirect and cumulative impacts on the environment, both within the Delta and beyond.

OR90-11

Response to comment OR90-12

Comment noted.

We appreciate the opportunity to provide our comments and concerns. We hope that as the Council members review our comments they will do so with the understanding that the Ag-Urban Coalition is fully committed to the concurrent achievement of the coequal goals of improving statewide water supply reliability and restoring a sustainable Delta ecosystem. We believe that a Delta Plan which focuses on a comprehensive, integrated strategy that is implemented by the Delta Stewardship Council in coordination and cooperation with the more than two hundred local, state and federal agencies that have responsibilities in the Delta, has the greatest likelihood of achieving the coequal goals. We look forward to working with the Council and your staff in the months ahead to revise the draft Delta Plan to reflect such a model.

OR90-12

If you have any questions or feedback regarding these comments, please do not hesitate to contact me at (916) 441-4545.

Sincerely,



Timothy Quinn
Executive Director
Association of California Water Agencies
On the behalf of the Ag-Urban Coalition

Cc: Joe Grindstaff, Executive Officer, Delta Stewardship Council

Ag Urban II Coalition Participants

No comments

- n/a -

Water Organizations

- Association of California Water Agencies (ACWA)
- California Latino Water Coalition
- Coalition for a Sustainable Delta
- Mountain Counties Water Resources Association
- Northern California Water Agencies (NCWA)
- State and Federal Contractors Water Agency (SFCWA)
- San Joaquin River Group Authority (SJRGA)
- Southern California Water Committee (SCWC)
- State Water Contractors (SWC)
- Water Resources Association of Yolo County

Business / Ag Organizations

- California Building Industry Association (CBIA)
- California Business Property Association
- California Chamber of Commerce
- California Farm Bureau Federation (CFBF)
- California Grocers Association
- Regional Council of Rural Counties (RCRC)
- Western Growers
- Valley Industry and Commerce Association

Water Agencies

- Anderson-Cottonwood Irrigation District
- Alameda County Water District
- Banta-Carbona Irrigation District
- Bella Vista Water District
- Browns Valley Irrigation District
- Calaveras County Water District
- Calleguas Municipal Water District
- Carmichael Water District
- Central California Irrigation District
- Citrus Heights Water District
- City of Corona, DWP
- City of Folsom
- City of Roseville
- City of Sacramento
- Coachella Valley Water District
- Contra Costa Water District
- Cucamonga Valley Water District
- Del Paso Manor Water District
- Del Puerto Water District
- Desert Water Agency
- Eastern Municipal Water Agency

Water Agencies (continued)

- El Dorado County Water Agency
- El Dorado Irrigation District
- Fair Oaks Water District
- Firebaugh Canal Water District
- Friant Water Authority
- Glenn-Colusa Irrigation District
- James Irrigation District
- Kern County Water Agency
- Lake Hemet Municipal Water District
- Las Virgenes Municipal Water District
- Metropolitan Water District of Southern California
- Mojave Water Agency
- Nevada Irrigation District
- Placer County Water Agency
- Oakdale Irrigation District
- Orange Vale Water Company
- Rancho California Water District
- Rancho Murieta Community Services District
- Reclamation District No. 2068
- Reclamation District 800
- Regional Water Authority
- Sacramento Suburban Water District
- Sacramento Regional County Sanitation District
- San Diego County Water Authority
- San Bernardino Valley Municipal Water District
- San Juan Water District
- San Luis & Delta-Mendota Water Authority
- San Luis Water District
- Santa Clara Valley Water District
- South San Joaquin Irrigation District
- Tehama-Colusa Canal Authority
- Three Valleys Municipal Water District
- Tuolumne Utilities District
- Turlock Irrigation District
- Utica Power Authority
- Vallecitos Water District
- Valley Center Municipal Water District
- West Stanislaus Irrigation District
- Western Canal Water District
- Western Municipal Water District
- Westlands Water District
- Yolo County Flood Control & Water Conservation District
- Yuba County Water Agency
- Zone 7 Water Agency

No comments

- n/a -