RLO026 Sacramento Co

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County of Sacramento

January 14, 2013

Cindy Messer
Delta Plan Program Manager
Delta Stewardship Council (DSC)
980 Ninth Street, Suite 1500
Sacramento, California 95814

RE: Comments on the Delta Plan's Recirculated Draft Program Environmental Impact Report (Draft PEIR)

Dear Ms. Messer:

Sacramento County appreciates the opportunity to comment on the Recirculated Draft PEIR prepared for the Delta Plan (Plan). While the recirculated DPEIR continues to describe and evaluate a wide variety of subject matter topics, it does not appear all of the County's concerns and comments regarding inadequate environmental analysis/mitigation, described in our written comments on Plan's DEIR, have been sufficiently addressed. Please refer to our February, 2, 2012 correspondence (attached). In particular, the County remains very concerned about the findings and conclusions identified in the recirculated document regarding Sacramento County-specific impacts associated with land use, flood protection/control, and water management operations. We again request that our comments be considered and adequately addressed in the forthcoming Final Program Environmental Impact Report (FPEIR). RLO026-1

Description of Revised Project (Section 2)

The italicized narrative below is extracted directly from the DPEIR. Select sections in the extracted narrative are underlined and specifically addressed in the County's comments.

The No Project Alternative also includes physical activities/projects that are permitted and funded at this time, such as expansion of Los Vaqueros Reservoir (Phase 1 only), new intakes/diversions for Freeport Regional Water Authority and Stockton, and initial construction of the Dutch Slough ecosystem restoration project. Under the No Project Alternative, conditions related to flood risk, ecosystem health, water quality, and water supply reliability (particularly in the Delta) would continue to degrade. Exports of Delta water would be greater under the No Project Alternative than under the Revised Project. RLO026-2

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Response to comment RLO026-1

Please see the responses to the commenter's prior letter, LO231.

Response to comment RLO026-2

The existing conditions at the time of the publication of the Notice of Preparation of this EIR in December 2010, is the normal CEQA environmental baseline pursuant to CEQA Guidelines section 15125(a). 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, including reasonably foreseeable modified or new plans that are currently being analyzed for adoption or are currently required to be adopted. The No Project Alternative also includes physical activities and projects that are permitted and funded at this time. The proposed Delta Plan and the alternatives are compared to the environmental baseline described above.

Portions of the above are outdated or factually incorrect and require revision. Subsequent to the original drafting and release of the draft Delta Plan and EIR the Freeport Regional Water Project (FRWP) was permitted, constructed and has become operational, with a design pumping capacity of 284.6 cubic feet per second (cfs) [185 million gallons per day (mgd)]. The existence of this facility must be considered as part of the baseline conditions when evaluating existing conditions under the "No Project" or any of the Project alternatives. Additionally, it is also important to note that no agreement exists between the Freeport Regional Water Authority (FRWA) and the City of Stockton, or any other agency, to expand FRWP (i.e., construct additional intakes) and/or to transfer water rights; nor is any such agreement being considered now or in the immediate future. As a result, the underlined references in the project description regarding future FRWP expansions are factually incorrect and should be corrected or removed from the Draft PEIR. The evaluation of impacts of the No Project Alternative (i.e., increased water exports) should also be revised, as needed, to accurately reflect these facts. RLO026-2 RLO026-3

Delta Flood Risk (Sections 2 and 5)

The revised project description indicates *RR P2 (Require Flood Protection for Residential Development in Rural Areas) was revised (as compared to Proposed Project RR P3). The Revised Project RR P2, like Proposed Project RR P3, includes 200-year flood protection for new residential development of five or more parcels located outside of areas designated for development in existing general plans as under the Proposed Project. The Revised Project RR P2, unlike Proposed Project RR P3, maintains existing levee criteria for agricultural, recreational, public services and utilities, transportation, or ecosystem land uses. Therefore, the levee criteria for these land uses would be less protective and could encourage fewer levee improvement projects than the Proposed Project.*

As stated in previous written comments on the Plan's proposed risk reduction policies, the County remains very concerned about the above flood protection language. Again, the 200-year flood protection standard for residential development in non-urban area exceeds the existing policies that were enacted by SB 5 (2007) and the Central Valley Flood Protection Act of 2008; and established in Government Code Sections 65007, 65302.9, 65860.1, 65865.5, 65962, and 66474.5 and California Water Code 9600-9603. RLO026-4

Existing law requires the national Federal Emergency Management Agency standard of flood protection (100-year) for development in non-urban areas. Note that "urban area" is defined as a developed area with 10,000 residents or more in Government Code section 65007(j). Water Resource Code Section 9602(h) further defines "urban area" by citing the existing definition in Public Resources Code Section 5096.805 (k) which states that an "urban area" is any contiguous area in which more than 10,000 residents are protected by project levees (this is also the definition referred to in Chapter, 7, Page 261 of the Delta Plan to define "urban area"). Moreover, an "urbanizing area" is defined as a developed area or an area outside a developed area that is planned or anticipated to have 10,000 residents or more within the next ten years (Government Code section 65007(k)).

None of the defined legacy communities in Sacramento County, nor the areas outside these communities to which Delta Plan Policy RR P2 would apply, are close to meeting this population-

Response to comment RLO026-3

Please see response to comment RLO026-2 above. The impacts of the No Project Alternative would not change, regardless of the completion of a specific project during the preparation of this EIR, because the no project alternative assumes that existing relevant plans and policies, as well as permitted and funded physical activities and projects, would continue to be implemented.

Response to comment RLO026-4

This is a comment on the project, not on the 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).There is no mitigation measure 5-3 in the EIR because the revised project will have no impact related to housing placement within the 100-year flood hazard area as mapped on a federal Flood Hazard Boundary, Flood Insurance Rate Map, or other flood hazard delineation map.

based threshold. Under the existing Sacramento County General Plan neither these legacy communities nor the entirety of the rural Delta in Sacramento County could ever reach a population greater than 10,000. As such, Delta Plan Policy RR P2 creates a conflicting standard by requiring a 200-year urban flood protection standard to areas that could not reasonably be considered urban or urbanizing under existing law. Further, this policy (proposed to be a regulation) pre-determines that any residential development consisting of five or more parcels should be automatically defined as "urban". By doing so, RR P2 attempts to use a flood protection standard to manage Delta resources without considering the larger context of how such development might reasonably and beneficially integrate with the surrounding non-urban, agricultural and legacy communities while still maintaining the co-equal goals. "Urban" is not a land use designation, thus the land use designation of any particular parcel should not be used to defined that parcel as "urban" in the context of flood protection. Instead, land use activities should continue to be considered and managed through the oversight of the Delta Protection Commission and its Land Use Resource Management Plan; and the determination of urban and urbanizing areas should continue to be made in a manner consistent with existing law.

RLO026-4

Currently, the State of California Department of Water Resources has not yet adopted 200-year floodplain elevations, maps or modeling for urban areas. According to the Central Valley Flood Protection Plan and the Government Codes sections (cited above) established by the Central Valley Flood Protection Act, the State has no intention of doing so for non-urban area (less than 10,000 residents), and specifically established the FEMA 100-year standard as the standard for non-urban areas. Further, FEMA does not utilize and has not established 200-year floodplain maps or elevations within its program. Thus, it is unclear what 200-year standard is intended in RR P2, how and when it will be established, and how this proposed regulation could be applied lacking the definition, development and adoption of a 200-year standard for non-urban areas.

Imposing an as yet undefined 200-year flood protection standard on the non-urban area of the Delta is in conflict with recently chaptered Government Code, is tantamount to a development moratorium as it is unattainable for the majority of the non-urban Delta, and may be considered an unauthorized taking. This impact is not considered in the DPEIR.

Resource Section 5 identifies numerous scenarios and relies on five fundamental environmental analysis tools. The analysis reveals a host of significant and unavoidable impacts resulting from the revised project. While Mitigation Measures 5-1 through 5-5 (no 5-3) address water supply, ecosystem restoration, water quality and flood risk, a critical impact is absent in the analysis, namely economic impacts to the Delta region. The County believes the Plan's proposed flood protection policies (and future regulations) have been understated as they have the potential to greatly disrupt the Delta's longstanding socio-economic framework. As indicated in previous written comments on the Delta Plan and DEIR, socioeconomic impacts resulting from new water management policies and regulations in the Delta is an on-going critical issue for the County.

Pursuant to CEQA, economic or social effects of a project are not to be treated or evaluated as significant impacts on the environment (CEQA Guidelines Sections 15064 and 15131). However, the Guidelines do allow an EIR to trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. Therefore, the DPEIR should analyze and describe

RLO026-5

Response to comment RLO026-5

The analysis of the environmental effect of a project consists of considering direct physical changes in the environment and reasonably foreseeable indirect physical changes in the environment which may be caused by a project (CEQA Guidelines § 15064(d)). See CEQA Guidelines § 15382 (significant effect on the environment means a substantial adverse change in the physical conditions within the area affected by the project). 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).

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the level of short- and long-term economic /financial impacts that Sacramento County, and the Delta communities will be subject to as a result of the proposed flood risk actions/scenarios. Specifically, those impacts resulting from the actions described in the "Protect and Enhance Delta as an Evolving Place" scenario (page 5-15). RLO026-5

Land Use and Planning (Section 6)

The Delta Plan's revised project description repeatedly states that providing/creating a more reliable water supply, a fundamental component of the coequal goals statutory mandate, will be accomplished with a large-scale water conveyance facility (i.e., pipelines and intakes). This proposed water operations project is identified as a conservation measure (CM-1) in the Bay Delta Conservation Plan (BDCP). The BDCP process is currently being facilitated by the California Resources Agency and U.S. Bureau of Reclamation, independent of and several years behind the Delta Plan's adoption process. Nevertheless, the Delta Reform Act of 2009 (Water Code section 85320) indicates the BDCP shall be "considered" for inclusion into the Delta Plan. As a result, many of the findings and potential impacts described in the Draft PEIR are both troubling and problematic for the County.

For example, the Resource Section 6 states the following:

> ***Pages 6-3 and 6-4:*** *It is not known at this time how implementation of the Revised Project would result in construction and operations of water quality improvement projects, including the location, number, capacity, operational criteria, methods, and duration of activities. The nature and severity of construction-related land use impacts for the projects encouraged by the Revised Project will depend on the specific location and characteristics of the projects at the time they are implemented, and the specific mitigation measures adopted by the implementing agencies. In most cases, compliance with required permits and approvals and implementation of mitigation measures would reduce impacts associated with projects to a less than significant level. In some cases, the potential for land use impacts could result in a significant, unavoidable impact.* RLO026-6
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> ***Pages 6-4 and 6-5****: It is not known at this time how implementation of the Revised Project would result in construction and operations of water quality improvement projects, including the location, number, capacity, operational criteria, methods, and duration of activities. The nature and severity of construction-related land use impacts for the projects encouraged by the Revised Project will depend on the specific location and characteristics of the projects at the time they are implemented, and the specific mitigation measures adopted by the implementing agencies. In most cases, compliance with required permits and approvals and implementation of mitigation measures would reduce impacts associated with projects to a less than significant level. In some cases, the potential for land use impacts could result in a significant, unavoidable impact. Project-level impacts would be addressed in future site-specific environmental analysis conducted at the time such projects are proposed by lead agencies. However, projects encouraged by the Revised Project could increase land use impacts due to physical division of established communities; this potential impact is considered significant.*

Response to comment RLO026-6

The quoted text from pages 6-3, 6-4, and 6-5 of the RDPEIR describes significant land use impacts from projects that may be encouraged by the Delta Plan. Most of the impacts would be temporary, construction-related impacts that would remain significant, despite the implementation of mitigation measures (RDEIR, pp. 6-17 and 6-18). The proposed BDCP is a reasonably foreseeable future project that is not part of the Delta Plan. It is being evaluated by the Department of Water Resources as the CEQA lead agency. The cumulative impacts of the proposed Delta Plan, in combination with the impact of the proposed BDCP, are described in EIR Sections 22 and 23. Please refer to Master Response 1. The comment regarding legacy communities is a comment on the project, not on the EIR.

This conclusion (underlined) is especially concerning (and inaccurate) as the requisite infrastructure of a large scale State/Federal water operation facility has been identified to be located (primarily) in unincorporated Sacramento County. The massive water operations facility will result in devastating and likely unmitigable land use impacts, but will be exempt from most, if not all, of the County's local land use review and permitting processes. As a result, the conclusion above that the local permitting process will mitigate identified impacts to a less than significant level is inaccurate and understates the potential impacts to Sacramento County. RLO026-6

Seven of the eleven statutorily identified Delta communities (legacy communities) are located within unincorporated Sacramento County. The long-term sustainability and enhancement of this unique region's way of life is of the utmost importance to the County. The County has been consistent and adamant in its messaging that any loss or compromise of local land use protections and authority resulting from the Stewardship Council exceeding the intent of the State Legislature, and provided for in the 2009 Delta Reform Act, cannot and should not occur.

In closing, the comments included in this letter again focus on the potential for those impacts identified in the Revised Project to derail sustainable and responsible economic development efforts in the Delta as well as displace the County from its role of being **THE** primary decision making and approval authority, specifically related to implementation of flood risk protection and land use management actions. On numerous occasions the Draft PEIR concludes the Revised Project will result in unknown as well as significant and unavoidable impacts on the existing Delta communities. Given the severity of these impacts, the County questions whether the Stewardship Council can demonstrate the benefits of the Revised Project are sufficient to outweigh the identified significant impacts and, in turn, make the requisite Findings and Overrides as required pursuant to CEQA (Guidelines sections 15091 and 15093). RLO026-7

Sacramento County appreciates the opportunity to share our comments on the Plan's Draft PEIR and looks forward to seeing how they are addressed and incorporated into the Final PEIR. Should you require additional information, please contact Don Thomas, Senior Planner, at 916.874.5140.

Sincerely,

Robert B. Leonard
Chief Deputy County Executive

RL:dt

cc: Michael Peterson, Director of Department of Water Resources, Sacramento County
Michele Bach, Office of the County Counsel, Sacramento County
Cathy Hack, Environmental Coordinator, Department of Community Development, County of Sacramento

Response to comment RLO026-7

Comment noted.