

SOUTH DELTA WATER AGENCY

4255 PACIFIC AVENUE, SUITE 2
STOCKTON, CALIFORNIA 95207
TELEPHONE (209) 956-0150
FAX (209) 956-0154
E-MAIL Jherrlaw@aol.com

Directors:

Jerry Robinson, Chairman
Robert K. Ferguson, Vice-Chairman
Natalino Bacchetti
Jack Alvarez
Mary Hildebrand

Counsel & Manager:
John Herrick

January 14, 2012

recirculateddpeircomments@deltacouncil.ca.gov and
cindy.messer@deltacouncil.ca.gov
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: Recirculated Draft EIR

Dear Ms. Messer:

The South Delta Water Agency submits the following comments to the Delta Stewardship Council's Delta Plan ("Plan") and draft Program Environmental Impact Report ("EIR"). Due to computer problems, our more extensive comments were lost before being forwarded. Therefore, SDWA incorporates and adopts the comments being submitted by the Central Delta Water Agency, as well as the prior comments of both agencies' to the earlier draft Plans and environmental documents.

The Plan is insufficient in that the Policies and Recommendations are not consistent with the controlling statutes and therefore the EIR is deficient for not adequately describing both the base conditions or for adequately evaluating a reasonable range of alternatives or the impacts therefrom.

All evaluations of the Plan and the EIR must begin with the language in the 2009 statutes which created the DSC and mandated the Plan. These statutes are found at Water Code Sections 85001 et. seq. The requirements of these statutes include: providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem (Section 85054); to protect and enhance the quality of water supply from the Delta (Section 85001 (c)); protect and enhance the ... agricultural values of the Delta as an evolving place (Section 85020 (b)); reduce reliance on the Delta for water supply (Section 85021); protect and enhance the ecosystem (Section 85022 (c)(3)); or not diminish, impair or otherwise affect area of origin, watershed or origin or any other water rights protections (section 85031).

The Plan and EIR are deficient by not producing a water availability analysis to determine the amounts of water that can be used for any particular beneficial use, including exports and the environment. Without such an analysis, there can be determination of water supply reliability for any user, much less those dependent on the Delta and its watershed.

The analysis would also need to take into account the priority of rights under the current system including area of origin and watershed of origin and Water Code Section 12200 et.seq.

Similarly, without any determination of obligations for mitigation of damage to the environment, there can be no calculation of water supply or habitat needed for improving the Delta and its various species and beneficial uses. Until the impacts of the projects are identified and ,mitigated, and undertaking by the State to address Delta issues is an unlawful transfer of State funds since the Water Code requires the projects pay for their impacts. Only enhancement of fish and wildlife can be done with general funds under Section 11912.

The Plan and EIR fail to examine the impacts to water quality in the Delta resulting from increased habitat or new diversion facilities for the projects. AS presented before, a Sacramento River intake would exacerbate the salinity problem in the southern Delta. New habitat would result in increased consumption of water without any available substitute. The EIR makes no examination of these impacts.

The designation of large amounts of land in the Delta identified by the Plan as potential habitat constitutes a taking of some of the rights of the land owners without compensation. Similarly, as the habitat acreage in the southern Delta has remained unchanged for at least 60 years, the Plan cannot assume that increase habitat for fish in that area will result in an increase in fish populations.

The Plan and EIR do not seek to improve water quality in the Delta for agricultural use, but only to meet SWRCB standards which are currently being considered for relaxation. Improvement of the quality is mandated by the statutes.

For these reasons the Plan and EIR are insufficient and contrary to the controlling law. I apologize for the brevity of these comments which is due to computer malfunctions.

Very truly yours,

JOHN HERRICK