



TUOLUMNE UTILITIES DISTRICT

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Ms. Terry Macaulay
Delta Stewardship Council
980 Ninth St. Suite 1500
Sacramento, California 95814

January 28, 2011

Subject: Notice of Preparation, Draft Environmental Impact Report for the Delta Plan

Dear Ms. Macaulay:

On behalf of the Tuolumne Utilities District we wish to thank you for the opportunity to comment on the Notice of Preparation for the Draft Environmental Impact Report for the Delta Plan.

The Tuolumne Utilities District has an interest on the proposed Delta Plan due to the location of our District's service area within a San Francisco Bay Delta Tributary watershed.

Our main focus in commenting on the Notice of Preparation (NOP) is on those particular areas, which were of vital interest to the Tuolumne Utility District (hereinafter referred to as TUD or District), and its customers. TUD is a county water district organized and existing under Division 12 (§ 30000 - 32554) of the California Water Code. The District's boundaries include approximately the northerly 2/3rds of the County of Tuolumne. The District is bounded on the north by the Stanislaus River and on the south by the Tuolumne River and the Yosemite National Park. The eastern boundary is the County of Alpine and the western boundary is the County of Stanislaus. The total land area within the District's boundary is approximately 1,200 square miles. The District is located within the San Joaquin Hydrologic Region and the Mountain Counties Area of the State Water Plan.

The District facilities include a water system that receives water from the Pacific Gas and Electric Company via contract. The District also owns and operates conveyance facilities, municipal water treatment plants, distribution lines (over 200 miles), raw water supplies for agricultural customers, waste water and recycling facilities (irrigating over 500 acres of agricultural lands) and serves approximately 13,000 customers.

The District has adopted a recent update of its Urban Water Management Plan, is developing a (raw water) Ditch Sustainability Study, adopted a Strategic Plan (2008), is in the process of developing a "South Fork Stanislaus River, Water Supply Reliability Project Report," and a Water Resources Master Plan. Additionally, the District participated in recent Federal Energy Regulatory Commission license proceedings on facilities of interest. The District also was the organizing agency for the Tuolumne - Stanislaus Integrated Regional Water Management (IRWM) Plan process. This IRWM program has been recommended for funding to develop a Plan for the Region and is joined in this effort by over 20 public agencies that include; local governments, state agencies, federal agencies and non-governmental organizations. The District has a compelling interest in the actions of the State of California and/or the Federal government that may adversely impact the people, communities, economy and environment of the area we serve and the attendant watersheds. A reading of the Notice of Preparation for the Delta Plan caused us significant concerns regarding the potential for redirected impacts to our agency and its customers. We wish to be assured that those potential impacts will be adequately assessed.

A secondary purpose in providing comments on the NOP is to assist the Delta Stewardship Council (hereinafter referred to as Council) in the development of a Draft Environmental Impact Report that will comply with the California Environmental Quality Act (CEQA) as well as address those subjects in a fashion so as to allow for its use to facilitate future evaluation under the National Environmental Policy Act (NEPA). We believe that it would have been more prudent to prepare a joint CEQA/NEPA document. However, if that is not to be the course chosen by the Council we strongly recommend that the Council take all appropriate steps in the CEQA process to avoid creating potential inconsistencies in the level of analysis relative to that required in the subsequent NEPA process. We therefore will make reference in our comments to federal regulations, statutes and guidelines relative to NEPA. It is our hope that the Council will see fit to develop a document that is consistent with, and not in conflict, with the relative scope, level of analysis and subject matter of the requisite NEPA document.

We note that consistent with CWC §85057.5 that those "*covered actions*" will not include any plan, program or project that is outside the boundaries of the Delta or Suisun Marsh. Specifically, covered actions do not include plans, programs or projects proposed by the Council within the Delta tributaries area. Please affirm that distinction within the larger context of the project description and analysis of

the Environmental Impact Report (EIR). The relationship between covered actions and non-covered actions in terms of CEQA (and NEPA) compliance must be quite clear.

We note on page 1 and further throughout the NOP the distinction between the Delta and other portions of the state are blurred. The Commission must be diligent in limiting itself to a standard of planning within and for the Delta as anticipated in CWC §85302(b). This is to be a Delta Plan and not a Water Plan for the State of California. That document already exists and was most recently completed by the Department of Water Resources in the State Water Plan (Bulletin 160-09). A second State Water Plan, developed by an entity who's charge is one estuary, would be to confound the mandatory and existing State Water Plan which has a broader and much more diverse objective.

The Council is also cautioned to consider a threshold of planning that is taking place in other areas of the State - outside the defined Delta - that are not legally subordinate to a Plan for the Delta. Indeed, the list of related plans not mentioned in the NOP is quite lengthy. For example, resources planning outside the Delta just within the TUD region includes; Regional Water Quality Control Board Basin Plans, Groundwater Management Plans, County General Plans, City General Plans, Local Transportation Plans, National Park Plans, National Forest Plans, State Park Plans, Wildlife Management Plans, Urban Water Management Plans, Integrated Regional Water Management Plans, Emergency Services Plans, Water Master Plans, Federal Energy Regulatory Commission (FERC) licenses, U.S. Forest Service Special Use Permits and local Flood Control Plans.

It should be noted that a number of federal agencies within the Delta tributary watersheds not only manage resources and land; they do so under varying federal statutes. Others, such as the FERC hold quite specific regulatory control over water resources for energy generation. Absent specific authorizing federal legislation those agencies may not necessarily embrace the Council's Delta Plan.

Any programs, projects, or proposals contemplated by the Council in areas outside the Delta would be tested against and examined for consistency with those applicable plans by the agency charged with administering the subject plan. Such an evaluation would take place on an equal footing with any proposal by the Council and the Delta Plan. The EIR must clearly and consistently affirm the relationship of the Delta Plan to other plans, regulations and ordinances that are legally enforceable in those geographic areas outside the Delta. The legal authority of the Council "to plan" has statutory limits that must be reflected in the EIR. There must be no ambiguity within the EIR regarding the Council's authority outside the Delta and Suisun Marsh as it relates to other state agencies, federal agencies and local agencies and governments.

It should also be appreciated by the Council that many of the programs, plans and projects outside the Delta are already complimentary to anticipated actions to improve management of Delta resources. Therefore, it may be prudent for the Council to recognize the existing and anticipated beneficial influences of these activities on the Delta within the EIR.

The page 3 background description and need for the project narrative seems to make no distinction between water uses upstream of the Delta that utilize water beneficially and then return those flows to the watershed and other upstream uses that divert water out of the watersheds such that the Delta is bypassed. This situation occurs in both local agency projects and large-scale projects such as the Central Valley Project (CVP). The different consequences of diversions with no return flows to the system and those with return flows to the system is significant and must be clarified in the EIR "baseline" description as well as any assessment of impacts to the Delta system. An EIR analysis that treats all diversions as equal in impact to the Delta would be factually incorrect.

The page 4 narrative description of a sea level rise of some 55 inches (assuming this estimate is correct) would not occur in isolation. Any such significant change in sea level would be accompanied by equally, or even greater changes to the Delta tributary watersheds and those areas served by the Delta.

Therefore, if the 55-inch sea level change standard is to be used to establish parameters for analysis in the EIR, and guide the selection of alternatives, a much more vibrant and accurate description of the remainder of the Delta ecosystem in such a modified climate would also be necessary. As just one example, anticipated flows based on past hydrologic records will quite likely prove inaccurate if the climate change by year 2100 is supporting a rise in ocean elevations of 55". Flora and fauna changes in the watersheds would potentially be significant and could confound any Delta Plan that does not recognize those changes. Additionally, local climate changes in export (consumptive) areas would in all probability be equally altered.

Please note that similarly the page 5 narrative regarding the influences of "*regional climate change*" should not presume the 55" sea levels rise will occur absent significant changes in the Delta tributary watersheds and Delta export areas.

Please make clear in the EIR that references to "*Delta Governance*" refer to that geographic area per CWC §85057.5 and not a larger landscape footprint.

Our reading of CWC §85054 indicates that "*creating a more reliable water supply for California...*" includes those areas upstream from the Delta as well. Thus, there should be no presumption that junior downstream water rights holders such as the State and Federal Projects would hold an equal standing with senior, upstream water rights holders. The EIR must be clear on this point lest the reader be

confounded in determining which “California” the Council is referring to in its analysis.

Terminology must be clear and not subject to misinterpretation. For example, the phrase “*regional self-reliance*” as used on page 8 is unclear. While the fault with this lack of clarity may have its origins in the legislation, the Council should attempt to illuminate the meaning to the reader. We believe what it means is that each region (hydrologic region as identified in the State Water Plan) should not depend upon water resources imported from another region. Most of the Delta tributary areas already export the vast majority of the water yielded from their watersheds for downstream environmental and beneficial municipal and irrigation uses. Thus, in any discussion of “*regional self-reliance*” there must be commensurate recognition of the existing regions that are already self-reliant and indeed support other regions, with no reinvestment by those downstream beneficiaries in the natural infrastructure of the upstream watersheds.

Page 9, lines 25 and 26 refers to interconnecting habitats within the Delta and its watershed by 2100. Certainly if the climate changes sufficiently to raise sea levels by over 55” there will be significant changes in the flora and fauna of the watersheds which may confound any estimates of need (based on current specie’s needs) that must be quantified if such habitat connecting is to be effective.

Additionally, it the Council must recognize in the EIR background description that in many of the upper reaches of the Delta watersheds, and even in some export areas, federal land ownership exceeds over 50% of the land mass and in some cases approaches 95% of some local jurisdiction. Much interconnecting of habitats has already taken place.

Page 10 lines 27 and 28 identify actions to be taken outside the Delta to reduce flood risk in the Delta. The EIR must quantify any potential increase in localized flood risk to upstream areas as a result of the proposed Delta Plan. If the Council is to develop and impose plans for local flood protection it is reasonable to expect that the Council is then assuming liability for any loss of property and/or life resulting from implementation of such the Council’s actions. Any analysis of this topic must clearly identify potential flood hazards resulting from the Plan notwithstanding CWC §85307(a) and the Council’s plan to deal with the issue of responsibility.

The narrative description of the “*Secondary Planning Area, Tributaries to the Delta Watershed and, Areas that Use Water from the Delta Watershed*” must be made clearer within the EIR. The relationship of the Council to other existing authorized planning, regulatory and management agencies within California must be made equally clear. The EIR must, in an understandable fashion, identify what specific programs and projects will be carried out, under what specific authority, and what specific redirected impacts these actions may have on the environment and the people in the area of influence and not just the Delta.

Inasmuch as the Council has noted that it intends to construct the EIR in such a fashion so as to be applicable to the requirements for a Federal EIS analysis under NEPA, then where Federal guidance currently exists for such analysis they should be incorporated into the EIR.

We urge you to reference the National Oceanic and Atmospheric Administration's Order (Series 216-6, May 20, 1999) that describes Environmental Review Procedures for Implementing the National Environmental Policy Act. This document contains NOAA's policies relative to key aspects of any successful NEPA analysis. Of specific applicability to this project, is Section 4.011 Human Environment as defined by the Council on Environmental Quality (40 CFR 1508.14) is "*Human environment' shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of 'effects' (Sec. 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.*"

Further, as required by NEPA Section 102(2)(C), "*EIS's are to be included in every recommendation or report on proposals for legislation and for other major Federal actions whose impacts may have a significant impact to the quality of the human environment.*" We also refer you to 40 CFR 1508.27 with regards to the term significant and its consideration in both context and intensity. Context meaning the significance of an action as it relates to society as a whole, the affected region and interests and the locality.

Similarly the term "*Affecting*" (meaning the proposal will or may have an effect) may be significantly different per 40 CFR 1508.08 relative to CEQA analysis.

As the Council analyzes actions inside and outside the Delta there must be either now within the EIR, or later in an EIS, compliance with these requirements. To allow a more thorough and effective analysis of a project alternative as well as designing mitigation, we urge the Council to comply with the Federal standard within its document and not risk having to recirculate and EIR based on contrary or more accurate Federal assessments under NEPA. The sense of urgency about the Delta problems as captured in the NOP should be matched by a duty to due diligence in the process.

Page 13 describes a host of actions regarding tasks that the Delta Plan may engage in ranging from flood management, to water conservation, improved infrastructure and so on. It must be clear to the casual observer that such an ambitious geographically sprawling focus will result in impacts of a social nature. There will

potentially be community impacts from water reallocation proposals, landscapes covered over by new storage or conveyance facilities, new flood management proposals that impact existing land use, economies, and people, as well as possible new water efficiency proposals that will bring not only new conservation but potentially significantly higher water rates to areas that are economically disadvantaged. These social dislocations and impacts must be included in the EIR if not now, then certainly they will be addressed later within a Federal venue.

Page 13, line 23 cites language supporting the Delta Plan to promote statewide water conservation. It is presumed this is in addition to that already existing under state statute. If the Plan is proposing to promote additional conservation measures throughout the primary and secondary planning areas, the Council will ultimately have to seek legislative authority to impose those requirements. If the Council determines a legislative proposal is needed what specific authority is being sought must be made clear throughout the document as it applies to the scope of the programmatic actions and other "*Alternative Implementation Strategies*" as identified on Page 17 (regarding water conservation). Please note that SBX 7-7 does not require "... a 20% reduction in per capita urban water use throughout California..." It requires a 20% reduction in per capita urban water use in California. Not every agency, city and user will have to reduce per capita water use 20% by 2020 under SBX 7-7.

We urge the Council to capture all of the anticipated "*Alternative implementation strategies*" in one place, and then clarify what would be needed to legally implement them. If amendments to state and federal law are anticipated to be needed to implement the Plan these should be exposed early in the process and not later. This is especially applicable for a Programmatic EIR. As required by NEPA (Section 102(2)(C), EIS's are to be included in every recommendation or report on proposals for legislation and for other major Federal actions whose impacts may have a significant impact on the human environment. Within this context we urge you to reconcile the EIR to eventual NEPA requirements relative to the meaning of "Significance" and influencing factors per 40 CFR 1508.27 and 40 CFR 1508.14. This is especially important given the intention of the Council as demonstrated on page 14 lines 14- 16 "... the Delta Plan EIR will be prepared to the extent feasible to facilitate future evaluation of the Delta Plan in accordance with NEPA."

Page 15 Figure 2. We urge the Council to clarify the terms "*restore*" and "*restored ecosystem*." It is not clear to what time period or condition the restoration is intended. The Council must also recognize that nature is not static and any well-meaning attempt to restore a natural system must incorporate this factor when planning restoration actions. This dynamic should also be captured in the section of the NOP titled "*Protect and Enhance the Delta as an Evolving Place*."

Page 16 should also include an item (g) following line 8. It should read, "*Evaluate the effects of Delta Plan actions on people, communities and economies within the Secondary Planning area with regards to the cost of water supplies and energy costs.*" This is

especially of concern to areas such as within the District's boundaries that are all classified as Disadvantaged Communities (DAC). Provisions of SBX 7-7 recognize these areas and make accommodations based on this status.

Generally throughout the NOP and on page 16 reference is made to a Delta Governance plan is made. It should be noted that no specific authority for a new level of government oversight, let alone regulation over the broad reaching topics implied in the NOP, currently exists in California law. It would be better for the Council to be forthright and honest with regards to this matter as early in the EIR process as is possible. If a new layer of government that would hold regulatory and possibly land use and water resource authority over the entire secondary planning area, the implications are clearly significant to both the environment and the people. Again, to be consistent with NEPA purpose, we urge the Council to consider Federal requirements early in this process and thoroughly examine them in the EIR.

Page 19 lines 29 through 21, page 20, lines 10-12 and page 22 lines 19-22, openly call for reoperation of local surface diversions and storage facilities and groundwater facilities. These facilities, being local, typically supply local populations, communities and economies with a sustainable, affordable water supply. These were typically constructed by local agencies and paid for by customers of those agencies. Most of these facilities predate the significant problems in the Delta of today and hold water rights (some pre-1914) and in some cases FERC licenses and special use permits from the Forest Service. Others, such as the San Francisco Hetch Hetchy system are specifically authorized and permitted by Federal statute. Any attempt by the Council to enter this arena should be carefully examined in a constructive partnership approach rather than in an attempt to reorder the State's water rights system, over 100 years of case law and Federal law.

Nonetheless, should the Council wish to examine the alternative of re-operating the facilities owned and operated by other agencies, they must also examine the potential for redirected significant environmental and socioeconomic impacts to those areas served by those projects.

Page 22, lines 29 and 30 note actions relative to utility and transportation corridors that would be taken to accommodate the 55" sea level rise. It is quite likely that the climate changes that would produce this change would also result in significant changes to the runoff duration and intensity to areas within the secondary planning area. The Council should therefore, include in its analysis, what actions would be necessary within the secondary planning area to avoid increased flooding, erosion and impacts to energy generation and water supply in those areas.

Page 23 lines 33 through 37 imply a Council with much broader authority that currently exists in the law. If the Council has a specific legislative proposal in mind to enact eminent domain actions within the primary or secondary planning areas, or the Council intends to sponsor changes in California water law as referenced in the

Little Hoover Commission report, they should be made public early in the EIR process so as to comply with the full disclosure purpose of an EIR and previously cited NEPA requirements.

Page 24, lines 13 through 18 describe the use of the Plan's programmatic EIR to provide for some level of analysis of impacts associated with proposed strategies and actions. Further, the NOP states that the programmatic nature of the EIR "*...does not limit the applicability of provisions of the Act that designate the Delta Plan as a legally enforceable document.*" Quite the opposite is true. First, the NOP contains a most liberal interpretation of the Act in terms of what authority is granted with regards to the Delta Plan. Second, the NOP provides a far ranging discussion of alternative actions that may require, potentially, state and federal legislation to enact. Third, it is not clear that there is public support for some of the proposals in the NOP due at least in part, by the lack of clarity as to what specifically the Council intends on doing and using what authorities. Finally, the first test for a legally enforceable Delta Plan will be an adequate CEQA and NEPA environmental analysis.

Lack of a specific project description, range of alternatives and full disclosure of the underlying supporting documentation is required under CEQA. For a program with the grand ambitions of the Delta Plan it would seem prudent to prepare and environmental record which has data that supports anticipated actions in such a manner as can be understood by the population that the Plan would be imposed upon. In this case, almost all of the people of California. This is indeed an ambitious undertaking.

Page 27 lines 38 through 45 and page 28 lines 1 through 4 should, as precisely as is possible, define what the Plan's impacts would be to those land use plans (local and Federal) that already legally exist in the secondary planning area.

Page 28 lines 34 through 44 and page 29 lines 1 through 3 should also, consistent with CEQA and NEPA, evaluate any impacts, directly or indirectly a result of the Plan and its implementing actions, that accrue to those communities and economies within the secondary planning area. There are existing land use plans in place with housing elements that define the goals, objectives and policies for those areas and those should be juxtaposed against the Plan to identify redirected impacts.

Page 29 lines 27 through 38 should recognize that an analysis of the same sort of public service impacts within the secondary planning area must be provided if the Plan, even from a programmatic level, is to provide adequate disclosure for the sort of actions described in the NOP. A narrow focus just on the Delta for these subject areas will produce an inadequate EIR.

On behalf of the District and our customers we again wish to thank the Council for allowing for review and comment on the NOP. We urge the Council to consider our

comments and to embrace many of our suggestions, especially those relative to full disclosure of actions and impacts as well as a consistency with Federal NEPA standards for analysis.

Sincerely,

A handwritten signature in black ink, appearing to read 'PK', with a long horizontal stroke extending to the right.

Peter Kampa
General Manager