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DELTA STEWARDSHIP COUNCIL

A California State Agency

December 2, 2019

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San Luis & Delta-Mendota Water Authority
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Los Banos, CA 93635

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Via email: frances.mizuno@sldmwa.org

RE: Comments on Long-Term Water Transfers Final Environmental Impact Statement/Final Environmental Impact Report, SCH#2011011010

Dear Ms. Mizuno:

Thank you for the opportunity to review the Final Environmental Impact Statement/Final Environmental Impact Report (Final EIS/EIR) for the San Luis & Delta-Mendota Water Authority (SLDMWA) and US Bureau of Reclamation (Reclamation) Long Term Water Transfers project. The Council previously submitted comments to Reclamation on both the initial 2014 Draft Long-Term Water Transfers EIS/EIR (2014 Draft EIS/EIR, see **Attachment 1**) and the 2015 Final Long-Term Water Transfers EIS/EIR (2015 Final EIS/EIR, **Attachment 2**). Both comment letters identified: (1) omission of the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act) (Wat. Code § 85000 et seq.) and the Delta Plan from the regulatory setting sections of these documents; (2) the requirement in Water Code section 85225 for SLDMWA to determine whether the project is a covered action and, if so, file a Certification of Consistency with the Council before implementing the proposed project; and (3) Delta Plan regulatory policies or regulations potentially implicated by the proposed project. Ultimately, none of these comments were addressed in the 2015 Final EIS/EIR.

On March 22, 2019, the Council submitted comments to SLDMWA on the Long-Term Water Transfers Revised Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SEIS, see **Attachment 3**), again identifying these deficiencies. The Final EIS/EIR provides SLDMWA's proposed responses to these comments (Final EIS/EIR Appendix S, pp. S-28 to S-35). However, SLDMWA has not proposed revisions to the EIS/EIR in response to the Council's comments.

On November 15, 2019, SLDMWA representatives met with Council Chair Susan Tatayon and Council staff to discuss these concerns and to attempt to clarify certain aspects of the project of concern to the Council, including but not limited to: acknowledgement of the Delta Reform Act, Council, and Delta Plan in the regulatory setting of the EIS/EIR; the limited potential for

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– CA Water Code §85054

the proposed project to facilitate multi-year water transfers; and the strategy SLDMWA has outlined to mitigate streamflow impacts of such transfers across various water year types or under cumulative conditions created by multiple multi-year transfers. Thank you for meeting with us to discuss these points. The Council appreciates any additional clarifications you can offer through supplemental responses prior to certification of the Final EIS/EIR.

Although SLDMWA identifies limited potential for multi-year water transfers to occur, the Draft and Final EIS/EIR in multiple places identify the potential that such water transfers would result with implementation of the proposed project. Therefore, the Council maintains the position outlined in previous comment letters. This letter summarizes and responds to SLDMWA's responses to the Council's comments on the RDEIR/SDEIS.

Council Comments on SLDMWA Responses

SLDMWA Response 4-1: SLDMWA's response summarizes the Council's decision to exempt single-year water transfers from Covered Action requirements, and states that the "Lead Agencies are not managing a bank or program." The response states that any future transfer is an "independent transaction" subject to review and approval by Reclamation and the parties to the transfer, and that "[i]f Lead Agencies enter into a multi-year transfers agreement, the required Certifications of Consistency with the Council would be filed at that point." (This response also addresses comments 4-2, 4-3, 4-4, 4-5, and 4-7.)

Council response to SLDMWA response 4-1: While single-year water transfers are exempt from Delta Plan covered action requirements, the project description does not solely anticipate single-year transfers. The Final EIS/EIR (Section 1.3.2.2) describes numerous State regulations that pertain to long-term transfers, but does not mention applicable Water Code sections related to the Council's authority, the Delta Plan, and Delta Plan regulations that apply to multi-year water transfers. The Final EIS/EIR should acknowledge the Delta Reform Act, applicable Delta Plan regulatory policies **WR P1**, **WR P2**, and **GP 1** (as described in the Council's letter on the RDEIR/SDEIS (**Attachment 3**)), and consistency determination requirements.

The Council agrees that a Certification of Consistency with the Delta Plan will be necessary for a potential multi-year transfer project, and we encourage SLDMWA to further clarify that matter in the record prior to certifying the Final EIS/EIR. However, the Long-Term Water Transfers project itself also appears to meet the definition of a covered action, and SLDMWA should file a Certification of Consistency with the Delta Plan covering the program-level elements of the project before a potential multi-year water transfer occurs.

SLDMWA Response 4-6: With regard to Mitigation Measure WS-1, SLDMWA's response reiterates that the minimum streamflow depletion factor can be adjusted based on additional information. The response also clarifies that the Department of Water Resources (DWR) collects data on streamflow depletion as part of the Groundwater Sustainability Plan (GSP) development process.

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Council Response to SLDMWA Response 4-6: A portion of the Council's original comment from March 22, 2019 was not addressed in the Final EIS/EIR. The comment stated, "*This mitigation measure addresses the initial streamflow depletion, but it does not address cumulative impacts from multiple multi-year water transfers on streamflow. The measure should be updated to address conditions during various water year types and the cumulative effects of multi-year water transfers from groundwater pumping.*" SLDMWA's response does not describe how Mitigation Measure WS-1 addresses variations in water year types or the cumulative effects of potential multi-year water transfers, and the Final EIS/EIR does not propose to modify Mitigation Measure WS-1 to account for these factors.

In conclusion, Council staff recommend that SLDMWA determine if the Long-Term Water Transfers project is a covered action, and subsequently file a Certification of Consistency with the Delta Plan if applicable. For the reasons outlined on pages 2 and 3 of our March 22, 2019 letter, the project appears to meet the definition of a covered action under Water Code section 85057.5(a). We encourage SLDMWA to continue to engage with Council staff prior to developing and submitting a Certification of Consistency for this project. Please contact Anthony Navasero at (916) 445-5471 (Anthony.Navasero@deltacouncil.ca.gov) with any questions.

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer

Attachments:

Attachment 1: December 1, 2014 Council Comment Letter on 2014 Draft EIS/EIR
Attachment 2: April 24, 2015 Council Comment Letter on 2015 Final EIS/EIR
Attachment 3: March 22, 2019 Council Comment Letter on RDEIR/SEIS

Copied:

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