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DELTA STEWARDSHIP COUNCIL

A California State Agency

June 1, 2020

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Brian "BG" Heiland, Principal Engineer
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Via email: WMTAmendment@water.ca.gov

RE: Comments on the Partially Recirculated Draft Environmental Impact Report for the State Water Project Water Supply Contract Amendments for Water Management, SCH# 2018072033

Dear Brian Heiland:

Thank you for the opportunity to comment on the Partially Recirculated Draft Environmental Impact Report (PRDEIR) for the State Water Project Water Supply Contract Amendments for Water Management (project). The Delta Stewardship Council (Council) recognizes the Department of Water Resources' (DWR) objective to supplement and clarify terms of the State Water Project water supply contract (SWP Contract) that will provide greater flexibility in water management regarding transfers and exchanges of State Water Project (SWP) water supplies within the SWP service area consistent with applicable laws, contractual obligations, and agreements. As noted in the PRDEIR (p. ES-4), the project would add, delete, and modify provisions of the SWP Contract to meet these objectives. The project would not build new or modify existing SWP facilities, would not change any of the Public Water Agencies (PWA) Annual Table A amounts, and would not change the overall amount of water delivered through the Delta by the SWP.

The Council is an independent State of California agency established by the Sacramento-San Joaquin Delta Reform Act of 2009 (SBX7 1; Delta Reform Act (Wat. Code, §§ 85000 et seq.)). As stated in the Delta Reform Act, the State has coequal goals for the Delta: 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 (Wat. Code, § 85054). The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan.

"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

Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta and Suisun Marsh, which are referred to as “covered actions”. A state or local agency that proposes to undertake a covered action is required to prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and submit that certification to the Council prior to implementation of the project (Wat. Code, § 85225).

Based on the project location (PRDEIR, p. 4-1) and scope, the project appears to meet the definition of a covered action. As defined in Water Code section 85057.5 subdivision (a), a covered action is a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code (CEQA statute) that meets all of the following conditions:

1. Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;
2. Will be carried out, approved, or funded by a state or a local public agency;
3. Is covered by one of the provisions of the Delta Plan; and
4. Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and State interests in the Delta.

DWR has defined the project as a program subject to CEQA. The project further appears to meet the conditions for a covered action because:

1. SWP water delivery facilities that would be operated to fulfill the amended SWP contracts are located in part within the boundary of the Delta.
2. The project would be carried out and approved by DWR, a state public agency.
3. The PRDEIR describes project activities covered by Delta Plan policies, as described below; and
4. The PRDEIR describes project activities that may have a significant positive or negative impact on providing a more reliable water supply for California.

As noted above, the state or local agency approving, funding, or carrying out the project must determine if the project is a covered action, and if so, submit a certification of consistency with the Delta Plan to the Council. The certification is subject to appeal before the Council as set forth in Water Code section 85225.10.

In the following section, we describe Delta Plan regulatory policies that may apply to the project, based on information provided in the PRDEIR¹. This information is offered to assist DWR in preparing certified environmental documents for the project that can be used to support a certification of consistency with the Delta Plan.

¹ The Delta Plan policies identified in this letter are those Council staff has identified as relevant to the project based on information provided in the PRDEIR. However, DWR should determine the applicability and consistency of all Delta Plan regulatory policies in a certification of consistency for the project.

Detailed Findings to Establish Consistency with the Delta Plan

Delta Plan General Policy **G P1** (Cal. Code Regs., tit. 23, § 5002) specifies what must be addressed in a certification of consistency filed by a state or local agency with regard to a covered action. The certification of consistency must include detailed findings that address the following subsection:

Adaptive Management

Delta Plan Policy **G P1(b)(4)** (Cal. Code Regs., tit. 23, § 5002 (b)(3)) requires that ecosystem restoration and water management covered actions include adequate provisions, appropriate to scope of the action, to assure continued implementation of adaptive management. This requirement is satisfied through (1) an adaptive management plan that describes the approach to be taken consistent with the adaptive management framework described in Appendix 1B of the Delta Plan (<http://www.deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1b.pdf>), and (2) documentation of access to adequate resources and delineated authority for the implementation of the proposed adaptive management process.

Adaptive management is required for the project given its water management components. Council staff understand that an adaptive management plan is not available as part of the PRDEIR. An adaptive management plan consistent with the framework referenced above will be required as part of a certification of consistency with the Delta Plan for the project. Council staff in the Delta Science Program are available to provide early consultation on adaptive management upon request.

Reduce Reliance on the Delta through Improved Regional Water Self-Reliance

Delta Plan Policy **WR P1** (Cal. Code Regs, tit. 23, § 5003) provides that “[w]ater shall not be exported from, transferred through, or used in the Delta” if three factors apply, as set forth in subdivisions (a)(1), (a)(2), and (a)(3):

- (a)(1). One or more water suppliers that would receive water as a result of the export, transfer, or use have failed to adequately contribute to reduced reliance on the Delta and improved regional self-reliance consistent with all of the requirements listed in paragraph (1) of subsection (c);
- (a)(2). That failure has significantly caused the need for the export, transfer, or use; and
- (a)(3). The export, transfer, or use would have a significant adverse environmental impact in the Delta.

The PRDEIR identifies that the expected increase in groundwater pumping associated with the project could substantially deplete groundwater supplies and could result in subsidence in some of the study area. The PRDEIR identifies these as significant and unavoidable impacts after mitigation (PRDEIR, p. ES-12). In the Final EIR, DWR should identify if these impacts would be expected to occur in the Delta as described in subsection (a)(3) above. If significant

unavoidable impacts to groundwater would occur in the Delta with implementation of the project, the certification of consistency should address WR P1 and include documentation relative to all three subsections above.

Additionally, because this project provides additional flexibility for future water transfers and exchanges by PWAs, WR P1 requirements, including subdivision (a)(1), may apply to future transfers and exchanges that would move water through and result in a significant impact in the Delta. WR P1 subdivision (a)(1) provides that a project may not proceed if one or more water suppliers that would receive water as a result of the project have failed to satisfy all of the requirements of subdivision (c)(1). Fulfilling these requirements includes describing how all water suppliers that would receive water as a result of the project have adequately contributed to reduced reliance on the Delta and improved regional self-reliance by:

- (1) completing a current Urban or Agricultural Water Management Plan which has been reviewed by DWR for compliance with applicable requirements of the Water Code;
- (2) identifying, evaluating, and commencing implementation activities identified in a plan that are locally cost effective and technically feasible, which reduce reliance on the Delta; and
- (3) including within the plan the expected outcome for measurable reductions in Delta reliance and improvement in regional self-reliance. (emphasis added)

DWR should alert PWAs proposing to undertake a future multi-year water transfer or exchange project that would move water through the Delta of the legal requirement to submit a certification of consistency with the Delta Plan to the Council. Such a certification would need to demonstrate consistency with WR P1 by meeting the requirements described above.

Transparency in Water Contracting

Delta Plan Policy **WR P2** (23 CCR §5004) requires proposed actions which engage in contracting for the SWP and/or the Central Valley Project (CVP) be publicly transparent in a manner consistent with applicable DWR and Bureau of Reclamation policies, respectively.

The Council recognizes that DWR has engaged in a multi-year, facilitated public process to negotiate an Agreement in Principle (AIP) with the PWAs for the contract amendments proposed for this project. The Council recommends that DWR's certification of consistency for this project describe the process in detail, including records of public notice and summaries of public negotiation meetings, and documenting how DWR followed its applicable guidelines (03-09 and/or 03-10 (each dated July 3, 2003)), included as Delta Plan Appendix 2A².

² Delta Plan Appendix 2A is available on request from archives@deltacouncil.ca.gov.

Water Management and Efficiency

In addition to regulatory policies applicable to covered actions, the Delta Plan includes non-regulatory recommendations for actions to be taken by the Council and other agencies to support achieving California's coequal goals for the Delta. Specifically, Delta Plan Recommendation **WR R2** states that:

"[DWR] should include a provision in all [SWP] contracts, contract amendments, contract renewals, and water transfer agreements that requires the implementation of all State water efficiency and water management laws, goals, and regulations, including compliance with Water Code section 85021³."

The Council views the contract amendment process as an ideal venue for DWR to implement WR R2 by requiring PWAs to meet the requirements set forth in California law for WR P1 (Cal. Code Regs, tit. 23, § 5003). We urge DWR to consider adding additional terms to both the currently proposed contract amendments and future contract amendments to support implementation of the Delta Plan.

We invite DWR to engage with Council staff in early consultation as you complete the final environmental documentation for the project and prepare for submittal of a certification of consistency with the Delta Plan. Please contact me at (916) 445-0258 (Jeff.Henderson@deltacouncil.ca.gov) or (916) 589-0081 (Andrew.Schwarz@deltacouncil.ca.gov) with any questions.

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer

Cc: Cindy Messer, Department of Water Resources (Cindy.Messer@water.ca.gov)
Kris Jones, Department of Water Resources (Kris.Jones@water.ca.gov)

³ For reference, Water Code section 85021 states that "The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts."