



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

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May 20, 2024

JoAnna Lessard, Project Manager

Yuba County Water Agency

1220 F Street

Marysville, CA 95901-4740

Delivered via email: jlessard@yubawater.org

RE: Comments on the Draft Supplemental Environmental Impact Report for the Extension of the Lower Yuba River Accord Water Transfer Program, SCH# 2005062111

Dear JoAnna Lessard:

The Delta Stewardship Council (Council) thanks you for the opportunity to review and comment on the Draft Supplemental Environmental Impact Report (DSEIR) for the extension of the Lower Yuba River Accord Water Transfer Program (Yuba Accord Extension).

The Council is an independent state agency established by the Sacramento-San Joaquin Delta Reform Act of 2009, codified in Division 35 of the California Water Code, sections 85000-85350 (Delta Reform Act). The Delta Reform Act charges the Council with furthering California's coequal goals of providing a more reliable water supply and protecting, restoring, and enhancing the Sacramento-San Joaquin River Delta (Delta) ecosystem. (Water Code, § 85054.) The Delta Reform Act further states that the coequal goals are to 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. The Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta

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Plan, a comprehensive long-term management plan for the Delta and Suisun Marsh that furthers the coequal goals. (Wat. Code, § 85300.)

The Delta Plan contains regulatory policies, which are set forth in California Code of Regulations, Title 23, sections 5001-5015. Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain actions of State or local public agencies that take place in whole or in part in the Delta. (Wat. Code, §§ 85210, 85225.30.) 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.)

Review of the Extension of the Lower Yuba River Accord Water Transfer Program

In our initial review of the Notice of Preparation, the Yuba Accord Extension appeared to meet the definition of a covered action. Council staff previously submitted comments on the NOP outlining our rationale on September 12, 2023, and subsequently met with representatives of Yuba County Water Agency (Yuba Water) to discuss the contents of our comment letter. During our discussions, Yuba Water representatives explained why Yuba Water did not find that the Yuba Accord Extension qualified as a covered action. Yuba Water's reasoning was stated in Chapter 3.2.1 of the DSEIR.

After reviewing the DSEIR, the Yuba Accord Extension does not in fact appear to meet the definition of a covered action based on its status as a continuation of an existing program.

Water Code 85022(c)(4) states:

“Existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially persons living and working in the Delta.”

The Yuba Accord Extension represents an unchanged continuation of an existing developed use. Future developments under the Lower River Accord Water Transfer Program, however, may be covered actions if there is a change to the existing use, such as additional pumping at export facilities.

Many multi-year water transfers through the Delta that are not part of an existing program would qualify as a covered action. Temporary transfers of one year or less

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are determined not to significantly impact the co-equal goals of the Delta Plan [Cal. Code Regs., tit. 23, § 5001(jj)¹]. Single-year transfers can be used as a tool to help address acute water supply shortages in the current year as a supplemental/emergency supply, whereas multi-year transfers are a means to acquire additional water over multiple years to offset ongoing shortages. Prolonged increased pumping in the Delta may have a significant impact on the co-equal goals of the Delta Plan.

Closing Remarks

If there are any potential changes to the program in the future, we invite you to contact us to participate in the Council's early consultation for covered actions. If you have any questions regarding the contents of this letter, please contact James Edwards at James.Edwards@deltacouncil.ca.gov.

Sincerely,



Jeff Henderson

Deputy Executive Officer

¹ (jj) "Significant impact" for the purpose of determining whether a project meets the definition of a "covered action" under section 5001(k)(1)(D) means a substantial positive or negative impact on the achievement of one or both of the coequal goals or the implementation of a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta, that is directly or indirectly caused by a project on its own or when the project's incremental effect is considered together with the impacts of other closely related past, present, or reasonably foreseeable future projects. The following categories of projects will not have a significant impact for this purpose:

- (1) "Ministerial" projects exempted from CEQA, pursuant to Public Resources Code section 21080(b)(1);
- (2) "Emergency" projects exempted from CEQA, pursuant to Public Resources Code section 21080(b)(2) through (4);
- (3) Temporary water transfers of up to one year in duration.