



**Delta
Stewardship
Council**

A CALIFORNIA STATE AGENCY

June 6, 2024

Brian Deason

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RE: Comments on the Initial Study/Negative Declaration for El Dorado Irrigation District's Five-Year Conserved Water Transfer, SCH #2024050686

Dear Brian Dearson:

Thank you for the opportunity to review and comment on the Initial Study/Negative Declaration (IS/ND) for El Dorado Irrigation District's (EID) Five-Year Conserved Water Transfer (transfer). The Delta Stewardship Council (Council) recognizes the objective of the Project, as described by the IS/ND, is for EID to transfer up to 740 acre-feet (AF) annually of its pre-1914 water right to Westlands Water District (WWD). The water that will be made available for transfer was water that was previously lost through evaporation and seepage from an earthen and unlined main ditch that is now conserved as a result of new piped conveyance.

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

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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 Plan. (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.)

COVERED ACTION DETERMINATION AND CERTIFICATION OF CONSISTENCY WITH THE DELTA PLAN

Based on the project location and scope, as provided in the IS/ND, the project appears to meet the definition of a covered action. Water Code section 85057.5(a) states that a covered action is a plan, program, or project, as defined pursuant to Section 21065 of the Public Resources Code, that meets all of the following conditions:

(1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh. The project occurs within the boundaries of the Delta because the project proposes to transfer water through the Delta on an annual basis. This water movement is not part of routine State Water Project (SWP) or Central Valley Project (CVP) operations as the water being transferred is not part of the water rights held by the projects.

(2) Will be carried out, approved, or funded by a State or a local public agency. EID, a local public agency, is proposing a multi-year water transfer.

(3) Is covered by one of the provisions of the Delta Plan. Provisions of the Delta Plan that may apply to this project are detailed below.

(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

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interests in the Delta. This project may have a significant impact on the coequal goals to provide a reliable water supply for California and to protect, restore, and enhance the Delta ecosystem.

The State or local agency approving, funding, or carrying out the project must determine if that project is a covered action and, if so, file a Certification of Consistency with the Council prior to project implementation. (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001(j)(3).)

The following section describes the Delta Plan regulatory policies that may apply to the project based on the available information in the IS/ND.

General Policy 1: Detailed Findings to Establish Consistency with the Delta Plan

Delta Plan Policy **G P1** (Cal. Code Regs., tit. 23, § 5002) specifies what must be addressed in a Certification of Consistency for a project that is a covered action. The following is a subset of policy requirements which a project shall fulfill to be considered as consistent with the Delta Plan:

Mitigation Measures

Delta Plan Policy **G P1(b)(2)** (Cal. Code Regs., tit. 23, § 5002(b)(2)) requires covered actions not exempt from the California Environmental Quality Act (CEQA) must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018 (unless the measures are within the exclusive jurisdiction of an agency other than the agency that files the Certification of Consistency), or substitute mitigation measures that the agency finds are equally or more effective. These mitigation measures are identified in Delta Plan Appendix O and are available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

Although the IS/ND did not identify any significant impacts requiring mitigation, EID is encouraged to review Delta Plan Appendix O to determine if there are applicable mitigation measures that should be adopted and included in EID's environmental analysis.

Best Available Science

Delta Plan Policy **G P1(b)(3)** (Cal. Code Regs., tit. 23, § 5002(b)(3)) states that actions subject to Delta Plan regulations must document the use of best available science as relevant to the purpose and nature of the project. The Delta Plan defines the best available science as "the best scientific

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information and data for informing management and policy decisions.” (Cal. Code Regs, tit. 23, § 5001 (f).) Best available science is also required to be consistent with the guidelines and criteria in Appendix 1A of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>). A future certification of consistency for the project should describe how best available science was applied in project evaluations and decision-making.

Adaptive Management

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

The proposed EID transfer is a water management project, and as such, a future certification of consistency for the project should include an adaptive management plan that is consistent with Appendix 1 B requirements.

Water Resources Policy 1: 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 *all* three factors – set forth in subdivisions (a)(1), (a)(2), and (a)(3) – apply. 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 adequately contribute to reduced reliance on the Delta and improved regional self-reliance consistent with the requirements of subdivision (c)(1). Subdivision (a)(2) specifies that the project may not proceed if the failure to reduce reliance has significantly caused the need for the export, transfer, or use. Subdivision (a)(3) specifies that the project may not proceed if the export, transfer, or use would have a significant adverse environmental impact in the Delta.

The Project proposes to transfer water through the Delta on an annual basis from 2024 to 2028. As part of a future certification of consistency for the project, EID (and/or WWD) should describe how WWD fulfills the requirements set forth in subdivision (c)(1) and provide quantitative data in support. (see Cal. Code Regs, tit.

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23, § 5003(c)(1).) EID should further address the conditions of subdivisions (a)(2) and (a)(3). The certification of consistency should be supported by substantial evidence in the record that one or more of the conditions specified in subdivisions (a)(1), (a)(2), and (a)(3) do not apply to the project.

Water Resources Policy 2: Transparency in Water Contracting

Delta Plan Policy **WR P2** (Cal. Code Regs., tit. 23, § 5004) requires the contracting process for water from the SWP and/or the CVP be done in a publicly transparent manner consistent with applicable policies of the DWR and the Bureau of Reclamation (Reclamation). In the certification of consistency EID should document the planned contracting process and describe how EID will transparently conduct contracting business with the public.

Ecosystem Restoration Policy 1: Delta Flow Objectives

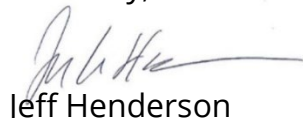
Delta Plan Policy **ER P1** (Cal. Code Regs., tit. 23, § 5005) requires the SWRCB's Bay Delta Water Quality Control Plan flow objectives to be used to determine consistency with the Delta Plan. The project proposes to transfer water annually through the Delta from 2024 to 2028. In the certification of consistency EID should analyze and document how the project may impact or alter Delta flows otherwise needed to meet the applicable Bay Delta Water Quality Control Plan flow objectives.

CLOSING COMMENTS

As EID proceeds with implementing the transfer, the Council invites EID to engage Council staff in early consultation (before submittal of a Certification of Consistency) to discuss the transfer. More information on covered actions, early consultation, and the certification process can be found on the Council website, <https://coveredactions.deltacouncil.ca.gov>. Council staff are available to discuss issues outlined in this letter as the EID proceeds in the next stages of its project and approval processes.

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