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DELTA STEWARDSHIP COUNCIL

A California State Agency

January 16, 2020

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Via email: LTO@water.ca.gov

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Jessica R. Pearson

RE: Comments on the Draft Environmental Impact Report for the Long-Term Operation of the California State Water Project, SCH# 2019049121

Dear Dr. Chao:

Thank you for the opportunity to comment on the Draft Environmental Impact Report for the Long-Term Operation of the California State Water Project (Draft EIR). The Delta Stewardship Council (Council) recognizes the Department of Water Resources' (DWR) objective to continue the long-term operation of the State Water Project (SWP) consistent with applicable laws, contractual obligations, and agreements. As noted in the Draft EIR (p. 3-15), the proposed project consists of multiple elements that characterize future operations of SWP facilities, modify ongoing programs being implemented as part of SWP operations, improve specific activities that would enhance protection of special-status fish species, or support ongoing studies and research on these special-status species. These elements consist of proposed project and program-level actions, proposed environmental protective measures, and adaptive management actions (collectively described as "Project Actions"). Implementation of the Project Actions is intended to continue operation of the SWP and deliver up to the full contracted water amounts while minimizing and fully mitigating the take of listed species consistent with California Endangered Species Act (CESA) requirements.

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

Comments Related to the Draft EIR and Delta Plan

The Draft EIR describes the Project Actions in four categories: project-level actions, program-level actions, environmental protective measures, and adaptive management actions. The Draft EIR describes many of the Project Actions as a continuation of DWR's ongoing efforts to comply with regulatory requirements or in response to reasonable and prudent alternative actions under the 2008 and 2009 Biological Opinions for the SWP and the federal Central Valley Project (CVP). However, some Project Actions appear to be new or not part of ongoing efforts to comply with regulatory requirements, including, but not limited to, the following:

- To establish a minimum combined CVP and SWP export rate no lower than 1,500 cfs to protect human health and safety.
- To manage Old and Middle River (OMR) reverse flows based on species distribution (modeling and risk analysis) with provisions for capturing storm flows to implement real-time OMR management to minimize entrainment and aquatic species loss during water operations.
- Modified operations of the Suisun Marsh Salinity Control Gate (SMSCG) to improve Delta Smelt food supply and habitat.
- Implementing actions to transport productivity (phytoplankton and zooplankton) downstream to be utilized by Delta Smelt.
- To expand the existing water transfer window to extend between the months of July and November, with volumes up to 600 thousand acre-feet (TAF) or 360 TAF (dependent on the water type year) to increase SWP operational flexibility.
- To implement operational changes to salvage release scheduling and location at the Skinner Fish Facility to reduce post-salvage predation.
- To establish an Adaptive Management Team to oversee efforts to monitor and evaluate operations and related activities by using structured decision-making related to benefit and cost of operation activities to potentially be included as part of an incidental take permit, consistent with the CESA, for the long-term operation of the SWP.

The Council submitted a comment letter to DWR on the Notice of Preparation of an Environmental Impact Report (NOP) for this project. This letter focuses on the more detailed project description and analysis presented in the Draft EIR.

Reduce Reliance on the Delta through Improved Regional Water Self-Reliance. The proposed project includes Project Actions that could modify the amount or timing of water exported from, transferred through, or used in the Delta. Specifically, the Draft EIR describes a new Project Action to establish a minimum export rate of 1,500 cubic feet per second (cfs) to protect human health and safety, as well as a new Project Action to increase the water transfer window from four months to five months (July to November) and set a maximum transfer amount of: (1) 600 TAF for critical water years and dry water years following critical or dry water years, and (2) 360 TAF for all other water year types.

The Council recommends that additional information be included in the Final EIR describing these Project Actions, including:

- Additional information clearly describing how the 1,500 cfs minimum export rate was derived.
- Additional information describing the rationale for expanding the water transfer window from four months to five months, as well as the potential for the increased window of time to potentially induce more multiple-year water transfers.
- Additional analysis of the volume of water that would be exported from the Delta during the expanded five-month water transfer window. The Draft EIR describes the proposed maximum transfer amounts (360 TAF or 600 TAF) that would apply to specific water year types (Draft EIR, p. 3-51), but does not describe how these proposed maximum transfer amounts were determined or if they would increase exports from the Delta.

Delta Flow Objectives. The Draft EIR describes Project Actions that would establish a minimum export rate of 1,500 cfs to protect human health and safety, an expanded window for water transfers from four months to five months, and a proposed maximum transfer amount of 360 TAF or 600 TAF. The Draft EIR includes modeling analysis that simulates Delta conditions with the Project Actions. These simulations indicate that SWRCB flow objectives could be met under the modeled conditions and with implementation of the Project Actions. (Draft EIR, p. 5-11.)

The Draft EIR also describes Project Actions to implement studies to improve performance of the Skinner Fish Facility for salvage, to improve actions to reduce post-salvage predation and improve accuracy and reliability of data and fish survival. The Draft EIR describes regulatory limitations on operations of delta water diversions, specifically under D-1641. The Draft EIR describes how D-1641 authorizes the SWP and CVP to jointly use their respective pumping plants in the South Delta, with conditional limitations and response coordination plans (referred to as the Joint Point of Diversion, or JPOD). The JPOD accomplishes basic objectives of the SWP and CVP, including minimizing entrainment of Delta fish. The Draft EIR provides modeling results which demonstrate increased entrainment of larval and juvenile Delta Smelt under the proposed project relative to existing conditions. The Final EIR should clarify how the project would address the modeled increase in entrainment under D-1641, or how the increase in entrainment is mitigated by potentially improved salvage techniques and procedures.

Avoid Introductions of and Habitat Improvements for Invasive Nonnative Species. The Draft EIR proposes a Project Action to operate the SMSCG to improve Delta Smelt food supply and habitat. Modified operations of the SMSCG may create additional lower salinity habitat in Suisun Marsh, which would potentially benefit some non-native species, such as largemouth bass. The Final EIR should describe how the proposed Project Action would avoid habitat improvements for nonnative invasive species including, but not limited to, analysis of changes in salinity and flow regime. The proposed AMP should describe data collection methods (e.g., monitoring plan) with respect to the response of non-native species, and evaluate how Project Actions affect habitat for non-native species (see additional comments below).

Best Available Science. The Final EIR should include additional information and analysis documenting use of best available science relative to the following topics:

- establishing minimum export rates and expanding the water transfer window
- hydrologic modeling conducted to demonstrate achievement of Delta flow objectives; and
- potential for project operations to result in increased entrainment of Delta Smelt at the JPOD.

Adaptive Management. The proposed Adaptive Management Action includes various components of the Council's adaptive management framework (available in Delta Plan Appendix 1B at <http://www.deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1b.pdf>), including:

- An AMP to evaluate the efficacy of operations and related activities;
- Establishment of an Adaptive Management Team (AMT) to oversee efforts to monitor and evaluate operations;
- Structured decision-making to assess the relative benefits and costs of proposed operations and activities; and
- Identification of proposed adaptive management changes to operations and related activities.

The Council commends DWR's intent to develop an AMP prior to issuance of an Incidental Take Permit (ITP) and for the California Department of Fish and Wildlife to incorporate the AMP as a condition of the ITP for CESA coverage for long-term operations of the SWP. Development of the AMP will be a significant and multi-agency undertaking, requiring both financial and personnel resources. The Draft EIR describes broadly the components to be included in the AMP. These are ambitious, complex, and far-reaching (e.g., inclusion of a plan for ongoing SWP operations, and the relationship between the AMP and real-time operations). We recommend that the Final EIR provide more specificity and detail on the budget and personnel resources that will be required to fully develop and implement the AMP and demonstrate that these resources will be available to DWR to carry out these aspects of the Proposed Action. The needed resources should also be identified for other aspects of the Draft EIR that are not explicitly mentioned under the AMP, such as the Longfin Smelt Science Plan. Additionally, the Final EIR and/or the subject AMP should clarify and define roles of and interactions between the proposed Delta Coordination Group, the Adaptive Management Team, and the two plans they will respectively generate, the Habitat Action Plan and the Adaptive Management Plan.

The Draft EIR already acknowledges the Council's Delta Science Program (DSP) as a potential partner for the AMP in the Draft EIR. The DSP is available to support the development and implementation of the AMP. Specifically, the DSP has staff dedicated to Science-Based Adaptive Management. This group facilitates and helps implement adaptive management processes for resource management actions, and is well-suited to assist DWR and the California Department of Fish and Wildlife (CDFW) with the AMP. DSP staff can assist

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with analysis and synthesis to inform refinement and implementation of Project Actions in successive years, facilitate meetings, and/or provide guidance on best available science for the AMP. The specific role of DSP Adaptive Management staff can be appropriately defined in collaboration with DWR.

We invite DWR to engage with Council staff as you finalize the environmental impact analysis and prepare the AMP for the project. Please contact me at (916) 445-0258 (Jeff.Henderson@deltacouncil.ca.gov) or Anthony Navasero at (916) 445-5471 (Anthony.Navasero@deltacouncil.ca.gov) with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Henderson", with a long horizontal flourish extending to the right.

Jeff Henderson, AICP
Deputy Executive Officer

Cc: Cindy Messer (cindy.messer@water.ca.gov)
Michelle Banonis (michelle.banonis@water.ca.gov)