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January 14, 2013

Via Email and Overnight Mail
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Ms. Terry Macaulay
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: Public Comments on the Recirculated Draft Delta Plan Program
Environmental Impact Report, November 2012 [SCH #2010122028]

Dear Ms. Macaulay:

On behalf of Westlands Water District ("Westlands" or "District"), we submit this comment letter on the Recirculated Draft Delta Plan Program Environmental Impact Report ("Recirculated Draft Delta Plan PEIR").

Westlands provided extensive comments on the Draft Delta Plan PEIR in February 2012. Those comments have not been addressed by the Recirculated Draft Delta Plan PEIR, and we incorporate them by reference as if set forth fully herein. For the convenience of the Delta Stewardship Council and staff, a copy of Westlands' letter of February 1, 2012, and all referenced documents, are attached hereto. Particularly in light of the relationship of the Recirculated Draft Delta Plan PEIR to the prior draft, Westlands' comments of February 2012 remain valid and relevant.

The Recirculated Draft Delta Plan PEIR incorporates by reference the Draft Delta Plan PEIR (Volumes 1 and 2), and as such, it perpetuates and compounds the same significant technical and legal inadequacies described in Westlands' previous comment letter. Like the original Draft Delta Plan PEIR, the recirculated document provides very little, if any, meaningful analysis or evidence to support its conclusory statements advocating in favor of the proposed Delta Plan. The absence of analysis results in internal contradictions, speculative assumptions and conclusions, and vague, unenforceable mitigation measures. For these reasons, among others, the Recirculated Draft Delta Plan PEIR fails to minimally satisfy the basic informational purposes of the California Environmental

Quality Act ("CEQA") (Public Resources Code Section 21000 et seq.). (See *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 390; Pub. Resources Code, § 21061.)

I. THE RECIRCULATED DRAFT DELTA PLAN PEIR IS NOT BASED ON SUBSTANTIAL EVIDENCE AND THUS FAILS TO MEET LEGAL REQUIREMENTS OF CEQA AND THE WATER CODE

A lead agency's conclusions must be supported by substantial evidence – facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. (CEQA Guidelines, § 15384; *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 393.)¹ Substantial evidence does not include argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence that is not credible. (Pub. Resources Code, §§ 21080, subd. (e), 21082.2, subd. (c), CEQA Guidelines, § 15384.) This recirculated environmental document, like the Draft Delta Plan PEIR, lacks supported analysis and instead presents voluminous, repetitious speculation and unsupported assumptions and conclusions regarding the incremental and cumulative impacts of the project. (See, e.g., Recirculated Delta Plan Draft PEIR, pp. 3-2 – 3-18, 4-2 – 4-37, 5-2 – 5-35, 6-2 – 6-18, 7-2 – 7-25, 8-2 – 8-21, 9-2 – 9-27, 10-2 – 10-27, 11-2 – 11-42, 12-2 – 12-11, 13-2 – 13-9, 14-2 – 14-41, 15-2 – 15-19, 16-2 – 16-17, 17-2 – 17-13, 18-2 – 18-25, 19-2 – 19-34, 20-2 – 20-10, 21-2 – 21-28, 22-1 – 22-24.)

Speculative possibilities do not constitute substantial evidence, and unsubstantiated narrative or even expert opinion saying nothing more than "it is reasonable to assume" that something "potentially may occur" is not analysis supported by evidence. (*Apartment Association of Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1173-1176.) Virtually every impact conclusion in the recirculated document suffers from this fundamental defect, which results in a prejudicial failure to disclose important environmental information essential to informed decision making and informed public participation. (*Rural Land Owners Association v. City Council* (1983) 143 Cal.App.3d 1013, 1022; *Protect the Historic Amador Waterways v. Amador*

¹ / All references to CEQA Guidelines are codified in the California Code of Regulations, title 14, section 15000 et seq.

Water Agency (2004) 116 Cal.App.4th 1099, 1106; see also *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 882 [because deficient EIR made meaningful assessment of potentially significant impacts of the proposed project impossible, the lead agency prejudicially failed to proceed in the manner required by law]; *Sierra Club v. State Board of Forestry* (1994) 1 Cal.4th 1215 [prejudice is presumed when the lead agency fails to obtain information necessary to meaningful assessment of potentially significant environmental impacts and development of mitigation measures]; *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1062 [lead agency misinformed regarding the scope of its discretionary authority committed prejudicial error in certifying inadequate environmental document].) Failure to adequately address environmental impacts of the proposed Delta Plan subverts CEQA's informational purposes and will result in a prejudicial abuse of the Delta Stewardship Council's discretion. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1129; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 672; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.)

The omission of meaningful information and the unsubstantiated narrative presented throughout the entirety of the environmental document are illustrated in the quote below regarding reliable water supply – which covers two paragraphs in Section 3 (Water Resources):

The number and location of **most** potential projects that would be implemented are not known at this time. However, the Revised Project, like the Proposed Project, specifically names the DWR Surface Water Storage Investigation, which includes the North-of-the-Delta Offstream Storage Investigation, Los Vaqueros Reservoir Project (Phase 2), and the Upper San Joaquin River Basin Storage Investigation Plan as potential projects to be implemented. Both the Revised Project and the Proposed Project also **encourage** the update of Bulletin 118 which **could** lead to improvements in groundwater management.

The Revised Project would apply to areas of the Delta watershed located upstream of the Delta unlike the Proposed Project. In **most** of this upstream area, groundwater supplies **are not substantial**, especially in the foothills and mountains

that surround the Sacramento and San Joaquin valleys. In these areas, it is **anticipated** that projects to recycle wastewater and storm water **would predominate over groundwater projects**. **Thus** the impacts related to the construction and operation of reliable water supply projects under the Revised Project **would be greater** than under the Proposed Project because of the newly-covered upstream area; these increased impacts would largely be the result of new storm water and wastewater recycling projects, while impacts related to groundwater projects would not increase over the Proposed Project.

(Recirculated Draft Delta Plan PEIR, p. 3-2 [emphasis added].)

These two illustrative paragraphs constitute the entirety of the analysis for one of the legislatively mandated coequal goals of the Delta Plan – to promote and facilitate a more reliable water supply.² Aside from its cursory treatment of crucial issues,³ there are no facts, data, or other evidence provided to support these vague conclusions or to anchor the document’s generalized comparisons of “greater” or “lesser” impacts.

² / The Delta Plan’s proposed regulatory definition of “achieving the coequal goal of providing a more reliable water supply for California” also conflicts with the authorizing statute. (Wat. Code, § 85302, subd. (d)(1).) The statute mandates that “[t]he Delta Plan shall include measures to promote a more reliable water supply that address all of the following,” including “[m]eeting the needs for reasonable and beneficial uses of water.” (*Ibid.*) The Council’s proposed regulation conflicts with this key criterion identified in the Delta Reform Act to achieve the goal of water supply reliability.

³ / The documents’ evaluation of potential impacts on water resources should be one of the most vital chapters in the EIR, yet as presented by the Council, these discussions vary little from the documents’ treatment of issues such as “paleontological resources,” “mineral resources,” “hazards and hazardous materials,” “noise,” and “population and housing.” (See, e.g., Recirculated Delta Plan Draft PEIR, pp. 3-2 – 3-18, 12-2 – 12-11, 13-2 – 13-9, 14-2 – 14-41, 15-2 – 15-19, 16-2 – 16-17.)

Likewise, in describing the existing environmental setting, the EIR's discussion remains superficial at best and omits critical information regarding existing water use and supplies, existing conservation plans and the status of their implementation, and other basic information necessary to describe the physical baseline conditions in which the proposed Delta plan would be implemented. (See CEQA Guidelines, § 15125, subd. (a).)⁴ In preparing an EIR, a lead agency is required to thoroughly investigate the existing environmental setting. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722-729; *Galante Vineyards v. Monterey Peninsula Water Management District* (1997) 60 Cal.App.4th 1109, 1121-1122; *Friends of the Eel River, supra*, 108 Cal.App.4th at pp. 872-875.) "While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." (CEQA Guidelines, § 15144.)

The Delta Plan EIR fails to disclose its foundational baseline assumptions, and does not explain, for example, whether it assumes that the existing conditions in which the Delta Plan would be implemented are drought conditions or normal conditions, whether conveyance through the Delta was assumed to be curtailed by various biological opinions or not, or what assumptions were made regarding capacity of existing storage and transport facilities. Without an accurate description of the project or its environmental setting, an EIR cannot achieve the foremost objective of CEQA, that is, the analysis, disclosure, and mitigation of project-related impacts on the environment. (CEQA Guidelines, §§ 15002, 15125.)

Not only does the Council's approach fail to meet CEQA's informational objectives, public disclosure requirements, and substantial evidence criteria, but it also falls well short of the Legislature's mandate to utilize the best available science in developing and assessing the merits of the proposed Delta Plan. (Wat. Code, § 85308, subd. (a).)

⁴ / Westlands' farmers, for example, have focused extensively on conservation efforts, maximizing irrigation efficiency and managing return flows in order to mitigate water supply and water quality impacts to the extent feasible. The environmental documents for the proposed Delta Plan fail to provide necessary baseline information regarding existing conservation and drainage efforts in order to meaningfully evaluate potential gains through implementation of the Delta Plan, as well as to determine whether the measures or alternatives needed to achieve those gains would be feasible.

II. THE RECIRCULATED DRAFT DELTA PLAN PEIR PROJECT DESCRIPTION VIOLATES CEQA

An EIR's project description must be accurate, stable, and complete in order to determine the proper scope of environmental review:

Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "No Project" alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.

(*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193.)

Without repeating the CEQA violations described in our prior comment letter, we reiterate that the Recirculated Delta Plan PEIR suffers from the same deficiencies and more.

First, the Recirculated Delta Plan PEIR Section 2 (Description of Revised Project) is unclear as to whether the proposal described in the Recirculated Draft Delta Plan PEIR is an alternative, constitutes the actual revised project, or is some combination of both. Section 2.1 states, "[t]he Revised Project, which is the subject of this Recirculated Draft PEIR, is the November 2012 Final Draft Delta Plan." (Recirculated Draft Delta Plan PEIR, p. 2-1.) Three paragraphs later, however, it states, "this Recirculated Draft PEIR evaluates the Revised Project (September 2011 Final Staff Draft Delta Plan) which is a new alternative and requires substantial reorganization of the project description." (*Ibid.*) The document is inaccurate and misleading, and unclear at best as to which plan is the Revised Project – the September 2011 Final Staff Draft Delta Plan or the November 2012 Final Draft Delta Plan – which is now an alternative, or the proposed project as modified, or some combination of both.

The primary harm caused by shifts among different project descriptions is that the inconsistency confuses the public and the commenting agencies, thus vitiating the usefulness of the process "as a vehicle for intelligent public participation." (*County of Inyo, supra*, 71 Cal.App.3d at pp. 197-198.) The Delta Plan EIR's incomplete, inconsistent and confusing project description violates

CEQA's foundational purposes of informed public participation and decision-making. (*Ibid.*) "A curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (*Ibid.*)

Second, to heighten the confusion between the new recirculated alternative or modified project description, the Recirculated Draft Delta Plan PEIR continues its previous analytical oscillation as to whether future individual projects are caused and therefore part of the Delta Plan, or whether they would be planned even without the Plan, and finally, whether current proposed projects are actually part of the proposed project. The Recirculated Draft Delta Plan PEIR still does not actually identify in the project description the regulations, policies, and recommendations that constitute the actual project that will result in reasonably foreseeable indirect and cumulative significant adverse environmental effects. (Recirculated Draft Delta Plan PEIR, pp. 2-1 – 2-26.) CEQA requires analysis of the potentially significant impacts of the Council's proposed action – the proposed regulatory policies of the Delta Plan. (*County of Inyo, supra*, 71 Cal.App.3d at pp. 197-198.)

To minimally comply with CEQA, the Recirculated Draft Delta Plan PEIR must disclose, analyze, and avoid or substantially lessen the potentially significant environmental impacts of the Delta Plan's proposed policies, such as effects of reduced surface water supplies on agricultural resources, impacts of the use of substitute water sources such as groundwater, subsidence and water quality issues, adverse impacts to air quality from increased dust and particulate matter, and social and economic impacts of reduced water supplies on local communities. The Recirculated Draft Delta Plan PEIR project description violates CEQA and its fundamental principles of public disclosure and precludes informed decision-making, because it fails to identify these regulatory policies as the basic elements of the proposed action.⁵ (CEQA Guidelines, § 15124; *County*

⁵/ In violation of CEQA and its informational purposes, the Recirculated Draft Delta Plan PEIR's description of the basic elements of the proposed action – the "Policies and Recommendations of the Proposed Project" – is buried in an appendix. (See, e.g., Recirculated Draft Delta Plan PEIR, App. C; see CEQA Guidelines, § 15124; *San Joaquin Raptor Rescue Center, supra*, 149 Cal.App.4th 645 at p. 659; see also *City of Santee v. County of San Diego* (1989) 214 CAL.APP.3d 1438, 1450 [the entire proposed project must be described in the EIR, and the project description must not minimize project impacts]; *Rural Land Owners Association v. Lodi City Council* (1983) 143 Cal.App.3d 1013, 1025

of Inyo, supra, 71 Cal.App.3d at pp. 192-193; *San Joaquin Raptor Rescue Center, supra*, 149 Cal.App.4th 645 at p. 659.)

III. THE PROPOSED REGULATIONS EXCEED THE STATUTORY AUTHORITY OF THE DELTA STEWARDSHIP COUNCIL AND CONFLICT WITH BASIC CEQA PRINCIPLES

While it is unclear whether the November 2012 Final Draft Delta Plan is being analyzed as the proposed project or an alternative, it is clear that the proposed November 2012 Final Draft Delta Plan exceeds the statutory authority of the Delta Stewardship Council.

Under the California Administrative Procedure Act ("APA") (Gov. Code, § 11349 et seq.), proposed regulations purporting to implement or interpret a statute must be consistent and not in conflict with statutory authority, and must be reasonably necessary to effectuate the statutory purpose. (Gov. Code, § 11342.2.) Regulations are invalid if they impair or conflict with the statute they purport to implement. (*California Association of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 11; *Esberg v. Union Oil Co.* (2002) 28 Cal.4th 262, 269.) No deference is accorded to the agency proposing the regulations as to whether it has exceeded its statutory authority. (*Rank, supra*, 51 Cal.3d at pp. 11-12; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 108-109.)

The proposed regulations purporting to implement the November 2012 Final Draft Delta Plan exceed the Delta Stewardship Council's statutory authority, and are invalid pursuant to the Delta Reform Act of 2009 (Wat. Code, § 85001 et seq.), CEQA, and the APA.

A. Section 5001(s)

The proposed regulatory definition of "significant impact" impermissibly attempts to alter and amend established CEQA principles regarding baseline conditions and assessment of impacts (direct, indirect, and cumulative), and is in direct conflict with controlling law. (Pub. Resources Code, §§ 21065, 21068; CEQA Guidelines, § 15125; *In re Bay-Delta Coordinated Proceedings* (2008) 43

[responsibility for a project cannot be avoided by limiting its title or description].)

Cal.4th 1143, 1167-1168 (“*In re Bay-Delta*”); *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 315, 320-322; *Citizens for East Shore Parks v. State Lands Commission* (2011) 202 Cal.App.4th 549, 557-566.) The Council has no authority to alter the fundamental framework of environmental review, which is concerned with whether approval of a proposed action may result in an *adverse physical change* in the existing environment. (Pub. Resources Code, §§ 21065, 21068; CEQA Guidelines, §§ 15060, subd. (c)(2), 15061, 15064, 15125, 15358, 15360, 15378, subd. (a); 15382.)

B. Section 5003(b)(2)(C)

One-year transfers approved by State Water Resources Control Board are statutorily exempt from CEQA pursuant to Water Code section 1729. Statutory exemptions are absolute; they reflect legislative policy determinations and are not subject to any exceptions. (*Sunset Sky Ranch Pilots Association v. County of Sacramento* (2009) 47 Cal.4th 902, 907; *Great Oaks Water Co. v. Santa Clara Water Dist.* (2009) 170 Cal.App.4th 9576, 966, fn. 8; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 128-129.) The Delta Stewardship Council has no authority to amend, alter, or limit application of this statutory CEQA exemption.

C. Section 5003(b)(2)(D)

The proposed definition of “covered actions” impermissibly attempts to alter and amend established CEQA principles regarding the definition of a “project,” as well as the application of statutory and categorical exemptions, and is in direct conflict with controlling law. (Pub. Resources Code, § 21065; CEQA Guidelines, §§ 15300.2, subd. (c), 15378; 15382.) Statutory exemptions under CEQA are absolute; they reflect legislative policy determinations and are not subject to any exceptions for “unusual circumstances.” (CEQA Guidelines, § 15061, subd. (b)(2); *Sunset Sky Ranch Pilots Association v. County of Sacramento* (2009) 47 Cal.4th 902, 907; *Great Oaks Water Co. v. Santa Clara Water Dist.* (2009) 170 Cal.App.4th 9576, 966, fn. 8; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 128-129.) The Council’s proposed regulation directly conflicts with these established principles.

Furthermore, “unusual circumstances” as they pertain to categorical CEQA exemptions have been defined and interpreted under CEQA. (CEQA Guidelines, §§ 15300.2, subd. (c); see, e.g., *Banker’s Hill v. City of San Diego* (2006) 139 Cal.App.4th 249, 261; *Turlock Irrigation District v. Zanker* (2006) 140 Cal.App.4th 1047; *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 800; *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1260-1261.) The Council has no authority to fundamentally alter controlling law.

D. Section 5004(b)(3)

The proposed regulation states that “[a]s relevant to the purpose and nature of the project, all covered actions must document use of best available science (as described in Appendix 1A).” While the use of best available science should be encouraged, this regulation appears to exceed the Council’s authority to the extent that it imposes higher standards of proof for local agency actions than can be found in the controlling law. (See, e.g., Code Civ. Proc., §§ 1085, 1094.5 [substantial evidence]; Pub. Resources Code, §§ 21168, 21168.5 [same].) The Council lacks authority to limit or alter the scope of local agency discretion.

E. Section 5009

The Council’s proposed regulation states that “[s]ignificant impacts to the opportunity to restore habitat at the elevations shown in Appendix 4 must be avoided or mitigated.” It is unclear what constitutes an “opportunity to restore habitat,” and how such an “opportunity” might be the subject of a potentially significant impact (which must be an adverse *physical* impact under controlling law). (Pub. Resources Code, §§ 21065, 21068; CEQA Guidelines, §§15358, 15382; see also *In re Bay-Delta, supra*, 43 Cal.4th at p. 1168 [emphasizing the importance of distinguishing “between preexisting environmental problems . . . , on the one hand, and adverse environmental effects” on the other, and rejecting argument that potential environmental impacts of proposed actions can be measured and compared in relation to their ability to achieve environmental goals or to improve existing conditions].)

IV. THE RECIRCULATED DRAFT DELTA PLAN PEIR FAILS TO ANALYZE THE POTENTIALLY SIGNIFICANT IMPACTS OF THE DELTA PLAN'S PROPOSED REGULATORY POLICIES

CEQA requires analysis of the potentially significant impacts of the Council's proposed action – the proposed regulatory policies of the Delta Plan. (CEQA Guidelines, §§ 15064, subd. (d), 15126.2, subd. (a), 15130, 15355; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) “[F]ailure to provide enough information to permit informed decision-making is fatal.” (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 361.) The Recirculated Delta Plan Draft PEIR fails to minimally comply with CEQA because it fails to properly describe the Delta Plan's proposed regulatory policies and fails to disclose the potentially significant effects of those policies, such as effects associated with reductions in the quantity of water conveyed through the Delta on agricultural resources, impacts of the use of substitute water sources such as groundwater, subsidence and water quality issues, adverse impacts to air quality from increased dust and particulate matter, and social and economic impacts of reduced water supplies on local communities.

Further, the Council has not adequately considered economic and social factors in determining the feasibility of proposed mitigation measures to reduce or avoid the Delta Plan's significant environmental effects. (CEQA Guidelines, § 15131, subd. (c).) Severe impacts on agricultural communities, including job and income losses, increased food and housing costs, and lost economic output, are the reasonably foreseeable result of the proposed Delta Plan regulations. (See, e.g., *Michael, et al.*, “A Retrospective Estimate of the Economic Impacts of Reduced Water Supplies to the San Joaquin Valley in 2009 (2010).”) The environmental document ignores these effects and their relationship to the feasibility of the regulations themselves as well as proposed mitigation measures. Similarly, the environmental document fails to analyze the impacts of the proposed regulations due to the loss of productive agricultural lands to fallowing, levee setbacks, habitat restoration, or limitations on use based on potential for restoration, and ignores the relationship of these impacts to the feasibility of the proposed regulations and mitigation measures. In short, the Delta Plan's environmental document continues to ignore the impacts of its proposed regulatory policies.

V. THE RECIRCULATED DRAFT DELTA PLAN PEIR MITIGATION MEASURES ARE VAGUE AND UNENFORCEABLE

Public Resources Code section 21002 requires agencies to adopt feasible mitigation measures (or feasible environmentally superior alternatives) in order to avoid or substantially lessen otherwise significant adverse environmental impacts. (Pub. Resources Code, §§ 21002, 21081, subd. (a); CEQA Guidelines, §§ 15002, subd. (a)(3), 15021, subd. (a)(2), 15091, subd. (a)(1).) To effectuate this requirement, EIRs must identify mitigation measures that decision-makers can adopt at the findings stage of the CEQA process. (Pub. Resources Code, § 21100, subd. (b)(3); CEQA Guidelines, §§ 15126, subd. (e), 15126.4, 15370.)

The mitigation measures and impact conclusions in the Recirculated Draft Delta Plan PEIR fail to satisfy CEQA for three primary reasons: (1) they are based on an inadequate project description; (2) they are impermissibly vague and beyond the Delta Stewardship Council's authority to impose; and (3) they are little more than unsubstantiated, superficial and extremely general narrative. (See, e.g., Recirculated Draft Delta Plan PEIR, pp. 3-2 – 3-18; 4-2 – 4-37; 5-2 – 5-36; 6-2 – 6-18; 7-2 – 7-25; 8-2 – 8-21; 9-2 – 9-27; 10-2 – 10-27; 11-2 – 11-42; 12-2 – 12-11; 13-2 – 13-9; 14-2 – 14-41; 15-2 – 15-19; 16-2 – 16-17; 17-2 – 17-13; 18-2 – 18-25; 19-2 – 19-34; 20-2 – 20-10; 21-2 – 21-28.) Overall, the document is far too general, even for a programmatic analysis, to enable decision-makers to make required CEQA findings as to whether particular mitigation measures would be effective, much less whether they would be feasible.

Without going through the details of each failed mitigation measure and impact conclusion, which are described in previous comments by Westlands and others, below are examples from Section 4 (Biological Resources) of the Recirculated Draft Delta Plan PEIR that demonstrate the meaningless "cut and paste" format utilized throughout every mitigation measure and impact conclusion in the document.

4.4.3.1.2 Impact 4-2a: Substantial Adverse Effects on Special-Status Species

Conclusion

It is not known at this time how implementation of the Revised Project would result in construction and operations of reliable water supply projects, including the location, number, capacity, operational criteria, methods, and duration of activities. The nature and severity of construction-related biological resource impacts for the projects encouraged by the Revised Project will depend on the specific location and characteristics of the projects at the time they are implemented, and the specific mitigation measures adopted by the implementing agencies. In most cases, compliance with required permits and approvals and implementation of mitigation measures would reduce impacts associated projects to a less than significant level. In some cases, the potential for biological resource impacts could result in significant, and unavoidable impacts. This situation is most likely to occur during construction and may be temporary in nature.

Project-level impacts would be addressed in future site-specific environmental analysis conducted at the time such projects are proposed by lead agencies. However, projects encouraged by the Revised Project could impair or degrade biological resources; this potential impact is considered **significant**.

Under the Revised Project, the impacts associated with construction and operation of groundwater projects, and wastewater and stormwater recycling projects would be greater than impacts under the Proposed Project because, unlike the Proposed Project, the Revised Project also would apply to the areas of the Delta watershed located upstream of the Delta. It is anticipated that there could be more wastewater and stormwater

recycling projects than groundwater projects in portions of the Delta watershed where groundwater storage is not substantial, such as in the foothills and mountains surrounding the Sacramento and San Joaquin valleys. Given the potential for an increased number and severity of actions in the Delta watershed under the Revised Project, the overall adverse biological resource impacts resulting from the Revised Project would be **greater than** the Proposed Project.

(Recirculated Draft Delta Plan PEIR, p. 4-6.)

4.4.3.1.3 Impact 4-3a: Substantial Adverse Effects on Fish or Wildlife Species Habitat

Conclusion

It is not known at this time how implementation of the Revised Project would result in construction and operations of reliable water supply projects, including the location, number, capacity, operational criteria, methods, and duration of activities. The nature and severity of construction-related biological resource impacts for the projects encouraged by the Revised Project will depend on the specific location and characteristics of the projects at the time they are implemented, and the specific mitigation measures adopted by the implementing agencies. In most cases, compliance with required permits and approvals and implementation of mitigation measures would reduce impacts associated projects to a less than significant level. In some cases, the potential for biological resource impacts could result in significant, and unavoidable impacts. This situation is most likely to occur during construction and may be temporary in nature.

Project-level impacts would be addressed in future site-specific environmental analysis conducted at the time such projects are proposed by lead agencies. However,

projects encouraged by the Revised Project could impair or degrade biological resources; this potential impact is considered **significant**.

Under the Revised Project, the impacts associated with construction and operation of groundwater projects, and wastewater and stormwater recycling projects would be greater than impacts under the Proposed Project because, unlike the Proposed Project, the Revised Project also would apply to the areas of the Delta watershed located upstream of the Delta. It is anticipated that there could be more wastewater and stormwater recycling projects than groundwater projects in portions of the Delta watershed where groundwater storage is not substantial, such as in the foothills and mountains surrounding the Sacramento and San Joaquin valleys. Given the potential for an increased number and severity of actions in the Delta watershed under the Revised Project, the overall adverse biological resource impacts resulting from the Revised Project would be **greater than** the Proposed Project.

(Recirculated Draft Delta Plan PEIR, p. 4-7.)

4.4.3.1.4 Impact 4-4a: Interfere Substantially with the Movement of Any Native Resident or Migratory Fish or Wildlife Species or with Established Native Resident or Migratory Wildlife Corridors

Conclusion

It is not known at this time how implementation of the Revised Project would result in construction and operations of reliable water supply projects, including the location, number, capacity, operational criteria, methods, and duration of activities. The nature and severity of construction-related biological resource impacts for the projects encouraged by the Revised Project will depend on the specific location and characteristics of the projects

at the time they are implemented, and the specific mitigation measures adopted by the implementing agencies. In most cases, compliance with required permits and approvals and implementation of mitigation measures would reduce impacts associated projects to a less than significant level. In some cases, the potential for biological resource impacts could result in significant, and unavoidable impacts. This situation is most likely to occur during construction and may be temporary in nature.

Project-level impacts would be addressed in future site-specific environmental analysis conducted at the time such projects are proposed by lead agencies. However, projects encouraged by the Revised Project could impair or degrade biological resources; this potential impact is considered **significant**.

Under the Revised Project, the impacts associated with construction and operation of groundwater projects, and wastewater and stormwater recycling projects would be greater than impacts under the Proposed Project because, unlike the Proposed Project, the Revised Project also would apply to the areas of the Delta watershed located upstream of the Delta. It is anticipated that there could be more wastewater and stormwater recycling projects than groundwater projects in portions of the Delta watershed where groundwater storage is not substantial, such as in the foothills and mountains surrounding the Sacramento and San Joaquin valleys. Given the potential for an increased number and severity of actions in the Delta watershed under the Revised Project, the overall adverse biological resource impacts resulting from the Revised Project would be **greater than** the Proposed Project.

(Recirculated Draft Delta Plan PEIR, pp. 4-8 – 4-9.)

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These qualitative “*greater than*” or “*less than*” comparisons repeated throughout the Recirculated Draft Delta Plan PEIR do not constitute the meaningful evaluation of impacts, mitigation measures, and alternatives that CEQA requires. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.)

The Delta Plan PEIR remains legally inadequate and fails to minimally comply with CEQA’s informational purposes. Westlands remains concerned that the Council will violate its duties under CEQA, the Water Code and the APA, and will prejudicially abuse its discretion if the Delta Plan is approved as proposed.

Thank you for the opportunity to submit these comments.

Very truly yours,

PIONEER LAW GROUP, LLP

A handwritten signature in black ink, appearing to read "Andrea Matarazzo", written over the printed name and firm name.

ANDREA A. MATARAZZO

AAM:jis
Enclosures

cc: Thomas W. Birmingham, Westlands Water District
H. Craig Manson, Westlands Water District