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DELTA STEWARDSHIP COUNCIL

A California State Agency

May 15, 2020

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Statewide Groundwater Management
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Sent via <https://sgma.water.ca.gov/portal/gsp/comments/47>

RE: Comments on Eastern San Joaquin Groundwater Subbasin Groundwater Sustainability Plan submittal to the Department of Water Resources

Dear Ms. Ravazzini,

The Delta Stewardship Council (Council) appreciates the opportunity to comment on the Eastern San Joaquin Groundwater Subbasin Groundwater Sustainability Plan submitted to the Department of Water Resources (DWR) by the Eastern San Joaquin Groundwater Authority (ESJ-GSA).

Background

The Sustainable Groundwater Management Act (SGMA) requires that all groundwater basins designated by DWR as high- or medium- priority basins subject to critical conditions of overdraft be managed using a Groundwater Sustainability Plan (GSP) by January 31, 2020. (Wat. Code, § 10720.7) Additionally, Water Code section 10733.4 requires Groundwater Sustainability Agencies to submit an adopted GSP to DWR for evaluation and assessment, which may include recommended corrective actions for identified deficiencies. DWR posts submitted GSPs to its website and provides 60 days for persons to submit comments to DWR about the plan. (Wat. Code, § 10733.4, subsect. (c).) This letter constitutes the Council's comments on the ESJ-GSP submitted to DWR by the ESJ-GSA on January 29, 2020, available at <https://sgma.water.ca.gov/portal/gsp/preview/47>. It presents comments similar to those the Council offered directly to the ESJ-GSA in a letter submitted November 13, 2019.

The Council is an independent State of California 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 the State's coequal goals for the Sacramento-San Joaquin Delta (the Delta) of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. (Wat. Code, § 85054.) The coequal goals are to be achieved in a manner

"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

that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. (Id.)

Pursuant to the Delta Reform Act, the Council has adopted the Delta Plan, a legally enforceable, long-range management framework for the Delta and Suisun Marsh for achieving the coequal goals. The Delta Reform Act grants the Council specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta and Suisun Marsh, referred to as “covered actions.” (Wat. Code, §§ 85022(a) and 85057.5). The Council exercises that authority through its regulatory policies (set forth in Title 23 of the California Code of Regulations, Sections 5001 through 5016) and recommendations incorporated into the Delta Plan. State and local agencies are required to demonstrate consistency with the Delta Plan when carrying out, approving, or funding a covered action. (Wat. Code, §§ 85057.5 and 85225).

Comments on Groundwater Sustainability Plan

The submitted ESJ-GSP does not appear to meet the definition of a covered action in Water Code section 85057.5(a). The Sustainable Groundwater Management Act (SGMA) exempts the preparation and adoption of a GSP or a coordinated GSP from the provisions of the California Environmental Quality Act (CEQA) (Wat. Code, § 10728.6), and the ESJ-GSP does not appear to have a “significant impact” on achievement of the coequal goals as that term is defined in California Code of Regulations, Title 23, Section 5001(dd). However, Water Code section 10728.6 does not exempt from the provisions of CEQA, projects undertaken to implement a groundwater sustainability plan or coordinated groundwater sustainability plan. Therefore, projects or management actions taken to implement a GSP may be potential covered actions.

The Council recommends that GSPs include acknowledgement of Delta Plan consistency requirements for covered actions for projects or management actions undertaken to implement the GSP. The submitted ESJ-GSP lists 23 water supply projects that either replace or supplement groundwater to attain an estimated pumping offset and/ or recharge of 78,000 AF/year within 20 years to achieve groundwater sustainability. These projects are categorized in Table 6-1 of the ESJ-GSP as planned, potential, and longer-term/conceptual. The ESJ-GSP states that individual local agencies that are members of the ESJ-GSA will be lead agencies for these projects and management actions. Some of the projects and management actions identified in Table 6-1 may occur in whole or in part within the legal Delta, may have a significant impact on the achievement of the coequal goals, and therefore may be potential covered actions. One such project is Project 11, South System Groundwater Banking with East Bay Municipal Utility District (EBMUD), which proposes a conjunctive use/groundwater banking project to store water supplies from the Delta via EBMUD water rights into the groundwater aquifers of the North San Joaquin Water Conservation District.

The Council recommends that DWR request that the ESJ-GSA revise the GSP to include the language provided below, alerting state and local public agencies implementing future

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projects identified in Table 6-1 of the need to comply with Delta Plan consistency requirements.

Consistency with the Delta Plan: For projects or management actions occurring in whole or in part within the Sacramento-San Joaquin Delta or Suisun Marsh, state or local public agencies should engage in early consultation with the Delta Stewardship Council (Council) regarding Delta Plan regulatory policies that may apply to the project or management action. Any project or management action that is determined to be a “covered action” within the meaning of the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act), Water Code section 85000, et seq., is required to file a “certification of consistency” with the Council that provides detailed findings regarding the project’s consistency with the Delta Plan.

Water Code section 85057.5(a) provides a multi-part test for the definition of a covered action. A covered action is a project subject to CEQA that would: 1) occur in whole or in part within the boundaries of the Legal Delta (Wat. Code, § 12220) or Suisun Marsh (Pub. Res. Code § 29101) (Wat. Code § 85057.5, subdiv. (a)(1)); 2) be carried out, approved, or funded by the State or a local public agency (Wat. Code § 85057.5 subdiv. (a)(2)); 3) have a significant 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 (Wat. Code § 85057.5, subdiv. (a)(4)); and 4) be covered by one or more of the regulatory policies contained in the Delta Plan (Cal. Code Regs., Tit. 23, §§ 5003-5015).

Council staff provide early consultations to assist with the lead agency’s determination as to whether a project is a covered action. Early consultation provides a project proponent the opportunity to discuss the project’s possible impacts on, and benefits to, the coequal goals, the Council’s regulatory processes, and the Delta Plan as it pertains to the project.

Thank you for the opportunity to provide comment. Should you have any questions, please contact Anthony Navasero at (916) 445-5471 or Anthony.Navasero@deltacouncil.ca.gov.

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council