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DELTA STEWARDSHIP COUNCIL

A California State Agency

November 13, 2019

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Sent via info@esjgroundwater.org

Executive Officer
Jessica R. Pearson

RE: Comments on Eastern San Joaquin Groundwater Subbasin Draft Groundwater Sustainability Plan

To Whom it May Concern:

Thank you for the opportunity to review and comment on the July 2019 Draft Groundwater Sustainability Plan (Draft GSP) for the Eastern San Joaquin Groundwater Authority (ESJ GSA). The Delta Stewardship Council (Council) recognizes the ESJ GSA's goal to achieve sustainability in the subbasin and implement water supply projects that either replace or supplement groundwater to attain an estimated pumping offset and/ or recharge of 78,000 acre-feet per year (AF/year) within 20 years.

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, 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. (Water Code section 85054.)

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." (Water Code sections 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

"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

consistency with the Delta Plan when carrying out, approving, or funding a covered action. (Water Code sections 85057.5 and 85225)

The Draft 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 groundwater sustainability plan or coordinated groundwater sustainability plan from the provisions of the California Environmental Quality Act (CEQA). (Water Code section 10728.6) Also, the Draft 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 a project that would implement actions taken pursuant to a groundwater sustainability plan or coordinated groundwater sustainability plan from the provisions of CEQA.

The Draft 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 Draft GSP as planned, potential, and longer-term/conceptual. The Draft GSP states that individual local agencies that are members of the ESJ GSA will be project proponents. Some of the projects identified in Table 6-1 may occur in whole or in part within the legal Delta, and may have a significant impact on the achievement of the coequal goals. Therefore, ESJ GSA should include reference to the Delta Stewardship Council in the Final GSP. ESJ GSA should also identify projects in Table 6-1 that are located in whole or in part within the legal Delta, and identify the potential for such projects to be covered actions in the column titled “Required Permitting and Regulatory Process” in the Final GSP.

The Council recommends that the Final GSP include the language provided below, alerting project proponents implementing future projects identified in Table 6-1 of the need to comply with Delta Plan consistency requirements.

Consistency with the Delta Plan: For projects 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. Any project 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 four-part test for the definition of a covered action. A covered action is a project that would: 1) occur in whole or in part within the boundaries of the Legal Delta (Water Code section 12220) or Suisun Marsh (Public Resources Code section 29101) (Water Code section 85057.5(a)(1)); 2) be carried out, approved, or funded by the State or a local public agency (Water Code section 85057.5(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

Eastern San Joaquin Groundwater Authority

November 13, 2019

Page 3

(Water Code section 85057.5(a)(4)); and 4) be covered by one or more of the regulatory policies contained in the Delta Plan (California Code of Regulations, Title 23, sections 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.

We encourage the ESJ GSA and the lead agencies of implementation projects to engage with Council staff in early consultation to collaborate and discuss project features as future projects proceed with planning, design, development, and environmental impact analysis. Should you have any questions, please contact Anthony Navasero at (916) 445- 5471 Anthony.Navasero@deltacouncil.ca.gov.

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
Delta Stewardship Council