



November 30, 2011

Attention: Imported Water Committee

Draft Environmental Impact Report on Delta Plan. (Information)

Background

In 2009, the California Legislature passed a package of legislation relating to the Sacramento-San Joaquin River Delta that included a Delta Reform Act and a water bond. The Delta Reform Act established the Delta Stewardship Council as the successor to the CalFED program and gave it the task of preparing a Delta Plan. The Delta Plan was to have been completed by the end of 2011, however, it is now scheduled for completion in early 2012.

The DSC has worked diligently throughout 2011 and has produced five drafts of the Delta Plan. The DSC released a draft Environmental Impact Report on November 4 for public comment. The comment period will extend until February 2, 2012.

Discussion

The draft EIR is based on the Fifth Staff Draft of the Delta Plan, which is referred to as the Proposed Project. The draft EIR also describes five alternatives to the Proposed Project, all of which it finds to be environmentally inferior to the Proposed Project.

The five alternatives include an alternative proposed by the state and federal water contractors; another alternative proposed by the ACWA Ag-Urban coalition; an environmentalist alternative that proposes decreasing exports and concentrating on ecosystem restoration throughout the state; an alternative that places increased emphasis on protection and enhancement of Delta communities, culture, and agriculture, with less ecosystem restoration; and a no-project alternative. The five alternatives are all rejected.

When it established the DSC, the Legislature charged the DSC with accomplishing the policy of the state to achieve the coequal goals providing a more reliable water supply and protecting, restoring, and enhancing the Delta ecosystem, while protecting and enhancing the unique cultural, recreational, natural resource, and agricultural values of the Delta as a place. Proponents of the Delta package understood that the DSC would combine and coordinate the plans and planning activities of the more than 200 government agencies that have responsibilities in the Delta, and would set forth a blueprint for proceeding with infrastructure projects that will help the state achieve the coequal goals. The DSC would have appellate powers to ensure that actions covered by the Plan would be consistent with the Plan.

Instead, the Fifth Staff Draft of the Delta Plan concentrates on regulatory actions to ensure that exporters of Delta water reduce their reliance on the Delta. The Plan also emphasizes increasing flows of freshwater into and through the Delta, to provide environmental improvements for species of fish that are listed under the state and federal Endangered Species Acts. The Plan does not provide at all for the building of water infrastructure. Under the Delta Reform Act, the Bay-Delta Conservation Plan will be incorporated into the Delta Plan, when it is completed and as long as it qualifies as a Natural Communities Conservation Plan under state law. The BDCP is the document and planning process that will propose an infrastructure project and will provide

permits for the projects under endangered species laws. The BDCP is scheduled to release a draft Plan and EIR in June 2012, with final approval scheduled for early 2013.

If the BDCP fails to qualify as an NCCP, the Delta Plan will have no provisions for infrastructure improvements and will largely rely on increased regional self-reliance and flow criteria. The Delta Plan also establishes a Delta Science Program and a system of adaptive management. The Draft EIR mainly examines the environmental impacts of these actions.

The Delta Plan establishes a series of policies, which are intended to have the force of regulatory law, and proposes a series of recommendations, which do not have the force of law. The policies include the following:

- Water suppliers who receive water from the Delta must include a Water Reliability Element in their Urban Water Management Plan or Agricultural Water Management Plan. This element must be in place by December 31, 2015. The element must detail how water suppliers are sustaining and improving their regional self-reliance and reducing reliance on the Delta.
- Update Delta flow requirements. The Delta Plan requires the State Water Resources Control Board to adopt and implement updated flow objectives for the Delta by June 2014, and for tributaries to the Delta by June 2018. The flow objectives are intended to control salinity in tidal waters and to provide fresh water conditions for spawning and migrating fish.
- All new water use from the Delta or transfers through the Delta for more than one year must be developed in a transparent manner consistent with Department of Water Resources and U.S. Bureau of Reclamation policies.
- Habitat restoration activities must be consistent with habitat type locations shown in an adopted Conservation Strategy.
- Actions other than habitat restoration activities must avoid or mitigate any loss of opportunity for habitat restoration.
- State and local agencies constructing new levees or substantially rehabilitating or reconstructing existing levees must incorporate alternatives that would increase the extent of floodplain and riparian habitats.
- Agencies proposing actions covered under the Delta Plan must show that they have fully considered whether their actions will cause the introduction of invasive species and shall prevent or mitigate any introduction of invasive species.
- Covered actions may not involve the unmitigated encroachment on floodways, floodplains, or potential future floodplain or bypass locations in the Delta.

The Delta Plan also includes a large number of recommendations, including the timely completion of the BDCP. The Delta Plan makes recommendations for storage facilities upstream of the Delta. Unfortunately, the Delta Plan does not directly provide for the construction of any water conveyance or storage infrastructure or institute a process to move toward construction. The draft EIR does not examine any environmental impacts construction would cause.

In the final analysis, the Delta Plan relies almost entirely on regional self-reliance and the reduction of dependence on the Delta to achieve the coequal goal of water supply reliability. It primarily uses flow requirements to achieve its ecosystem restoration objectives. ACWA and the state and federal water contractors have already commented that this plan and its attendant draft EIR do little to achieve the coequal goals, particularly with regard to water supply reliability. Water Authority staff will draft comments and submit them to the DSC by the February 2 deadline. The comments will address the following concerns, among others:

- The draft EIR does not address how the Delta Plan will achieve the coequal goals of water supply reliability and ecosystem restoration. It merely states that it will.
- The Delta Plan does not address, and the draft EIR does not analyze, construction of an infrastructure project to improve water supply reliability, other than to call for completion of the BDCP.
- The Delta Plan does not address, and the draft EIR does not analyze, any ecosystem restoration project or program other than merely increasing freshwater flows through the Delta.
- The draft EIR does not analyze how increasing freshwater flows through the Delta will achieve the goal of ecosystem restoration.
- The draft EIR dismisses the ACWA Ag-Urban Alternate Plan without analysis. The ACWA Alternate Plan lays out a process for achieving the coequal goals through the construction of water infrastructure based on the BDCP, and through habitat restoration through a combination of seasonal freshwater flows and wetlands restoration.
- The draft EIR and the Delta Plan assume a regulatory authority in the DSC that was not intended in the Delta Reform Act of 2009. The Legislature never intended that the DSC take a regulatory role in overseeing the efforts of local water suppliers outside of the Delta to reduce local and regional demand for water.

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