



ENVIRONMENTAL DEFENSE

finding the ways that work

February 7, 2006

Mr. Paul A. Marshall
California Department of Water Resources
1416 9th Street – 2nd Floor
Sacramento, CA 95814

Re: Comments on the South Delta Improvement Program DEIS/R

Dear Mr. Marshall:

Environmental Defense appreciates the opportunity to submit comments on the South Delta Improvement Program (SDIP) Draft Environmental Impact Statement/Review (DEIS/R) that was jointly released November 10, 2005 by the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (USBR). We recommend that DWR and USBR withdraw the DEIS/R for the reasons outlined below.

1. The DEIS/R fails adequately to consider an alternative that significantly *reduces* Bay-Delta export levels from current levels.

By not fully evaluating a range of reasonable alternatives, such as one that significantly reduces Delta exports from current levels, the DEIS/R fails to meet CEQA and NEPA requirements. A reduced export alternative was eliminated early on from further consideration on the basis of one sentence in an appendix to the document: "Because reduction of CVP and SWP exports can worsen water quality in the south Delta and does not improve the ability of south Delta farmers to divert, this alternative does not meet the local objective and is not retained for further evaluation for meeting this objective" (Appendix A, page 13). The use of the word "can" makes this finding meaningless. If the intent of the statement is that water quality would likely worsen if exports were reduced, the statement should be substantiated. In any event, this statement alone does not merit the exclusion of this alternative from further consideration.

At a time when freshwater diversions have reached an all-time high and the condition of the Bay-Delta ecosystem has declined precipitously it is critical that an alternative which reduces exports be thoroughly evaluated to better understand the potential benefits not only to the overall health of the Delta ecosystem but also to water quality. As the recently released final California State Water Plan update clearly shows, the state can meet current and future water demand *without* increasing freshwater diversions if investments are made in urban and agricultural water conservation, reclamation and the conjunctive use of groundwater supplies.

A revised DEIS/R must evaluate other options to meet unmet water supply needs south of the Delta other than increased pumping of water from the Delta.

2. The DEIS/R fails to include any of the interim findings of the Pelagic Organism Decline (POD) studies released by the Interagency Ecological Program (IEP) in 2005. The health of the Delta ecosystem is declining and some pelagic species, such as Delta smelt, are in danger of extinction. Studies are underway to better understand the exact causes of the declines, but preliminary findings released by the IEP in December 2005 indicate that export pumping, particularly during the winter, is linked to the decline in Delta smelt populations. This information was not included in the evaluation of impacts associated with increased pumping. It is therefore unreasonable for a proposal to be considered at this time that would significantly increase the amount of fresh water diverted out of the Delta. The DEIS/R should be withdrawn until the causes of the decline are identified, resolved, and there is a viable long-term upward trend in estuarine health.

3. The DEIR/S is based on a scientifically-deficient Biological Opinion. The DEIS/R is based on the Biological Opinion on the Long-Term Central Valley Project (CVP) and State Water Project (SWP) Operations Criteria and Plan (OCAP), which has recently been determined by an independent science review panel to not be based on the "best available science." The panel found that the BO was inadequate because 1) global climate change was not addressed, 2) variability in ocean productivity, and its effects on fish production, were not incorporated into the analyses, 3) unknowns or uncertainties were not addressed, 4) some models and analyses appeared to be flawed, and 5) genetic and spatial diversity was not adequately considered. The inadequacy of the BO must be addressed and resolved prior to releasing a revised DEIS/R.

4. The DEIR/S does not address the reduction in availability of dedicated environmental water since the CALFED Record of Decision was signed. In Environmental Defense's report, *Finding the Water: New Water Supply Alternatives to Revive the San Francisco Bay-Delta*, we illustrate that over the past few years while Delta exports have reached a record high, the Bay-Delta ecosystem has not received the water it was promised in the CALFED Record of Decision (ROD) on the order of approximately 420,000-460,000 acre-feet annually. This shortfall in water dedicated to environmental protection is largely due to diminished state and federal funding, unavailable operational assets through the Environmental Water Account and revised accounting rules for environmental water under the CVPIA. As a result, fishery agencies have been significantly constrained in their ability to dedicate water at key times of the year to protecting fisheries.

After reviewing the DEIS/R, it is clear that the document does not adequately consider the diminished delivery of environmental water or how this water will be guaranteed in the future. A revised DEIS/R should consider the legal obligation to provide this

environmental water to comply with the terms and conditions of State water permits, the CVPIA and the Endangered Species Act under existing levels of export, and that increased freshwater diversions would likely increase the need to dedicate water to the environment.

In *Finding the Water* we propose various opportunities to acquire much needed environmental water to help restore and protect the Bay-Delta. One such opportunity is retirement of drainage-impaired land in the San Joaquin Valley, which is currently being evaluated in the San Luis Drainage Feature Re-Evaluation Draft Environmental Impact Statement. Unfortunately, this DEIS did not adequately consider land retirement or the significant probable impacts on reasonable and beneficial uses of any saved water, such as reduced pollution from drainage water and increased supplies for Bay-Delta restoration. A revised DEIS/R should determine the amount of water that could be acquired through land retirement for the purpose of environmental restoration.

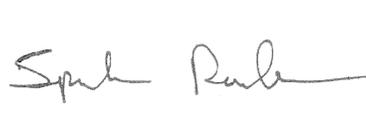
In addition, in *Finding the Water* we recommend that in the event a plan proceeds to increase export pumping capacity, that export capacity should first be dedicated to improving the timing of exports to protect fisheries. Such a scenario, incorporated in operating guidelines that are included in the regulatory standards to which the projects must adhere, could allow for sustainable and real-time flexible operation of the pumps to aid in the protection and restoration of the San Francisco Bay-Delta estuary. A revised DEIS/R should include an analysis of this scenario.

In conclusion, the SDIP EIS/EIR should be withdrawn and revised to include the recommendations stated above. Thank you for the opportunity to comment on the document and submit recommendations we hope will help improve the precarious condition of the Bay-Delta.

Sincerely,



Ann Hayden
Water Resource Analyst



Spreck Rosekrans
Senior Analyst

Thomas J. Graff
Regional Director