Public Trust Alliance
A Project of the Resource Renewal Institute
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February 4, 2006

Comments RE South Delta Improvements EIR-EIS

Dear Department of Water Resources;

While the environmental analysis justifying the "first stage" of the SDIP project appears "comprehensive" at first blush, its circular logic and significant omissions reduce its usefulness in supporting an informed public decision regarding the project. If it can't serve this purpose, it is legally inadequate within the CEQA/NEPA framework. Our organization requests that you withdraw this document and turn needed attention to digesting the key information now being produced by scientific studies regarding the biological collapse of Delta ecosystems and preparing some powerful stakeholders for the news that water projects cannot be implemented simply because they might continue a pattern of convenient subsidies (ie. Just because some players want to look for new water right away doesn't mean that strategy is

The document's key underlying assumption is that increased deliveries of northern California water to existing contractors (through a Delta which is assumed to continue to look and operate much as it does today) is synonymous with meeting the future water needs of our growing state. Alternatives involving conservation of presently available water supplies and recognition of priority uses before the knee-jerk reaction to increase supplies are not considered as they should be. Even DWR acknowledges in its latest update of the State Water Plan that conservation will be an important strategy but this environmental document doesn't seem to take that lesson to heart.

Increased understanding of climate change is showing us that the Delta and its tidal dynamics are in the midst of profound physical change. Historic responses to water supply problems may not be appropriate. What are the impacts of rising sea levels or changed precipitation and snowmelt patterns? This analysis doesn't ask some of the most significant questions of our time. And beyond concessions to a few water quality rulings, the analysis doesn't begin to reflect our growing understanding that reconciling "demand" and "supply" is much more than a question of quantity.

The analysis further assumes that a whole range of fundamental public inquiries have already been resolved by the "Programmatic" EIR which accompanied the now-imploding CALFED enterprise. That particular approach to Delta management is increasingly looking like a fantasy that can't be squared with the reality being revealed by our advancing science. This analysis seems predisposed to surrender historic public interests in favor of the narrow interests of private actors who may want to transfer public

water at a profit. This is particularly clear in the discussion of water rights (p. 8-29) which makes no mention of historic public interests which have always limited private claims, and which are very relevant to evaluating this development.

Although public trust interests are mentioned, the facile conclusion on p. 8-23 that "The SDIP is consistent with the public trust doctrine as its primary goals include a balance between fisheries, ecosystem restoration, and improved water supply reliability" lacks credibility. Under that law, the State has an obligation to future generations to manage trust resources in a manner that protects public trust uses wherever feasible. This analysis omits key discussion of affirmative public trust obligations and the legal requirements that trustees protect long term systemic values. The "Interim" operating principles and "avoidance and crediting" approach to supplementing the EWA are insufficient management devices that will fail to protect historic public interests and cannot substitute for the actual recognition of public obligations under the California Public Trust Doctrine. While the EIR makes note of the comparatively recent Mono Lake decision by the California Supreme Court, it fails completely to even mention the capacity and obligations of the State under the Public Trust that have been part of California Water Law for at least a Century before that (People v. Gold Run Ditch and Woodruff v. North Bloomfield Mining Co.).

An extensive effort was made to demonstrate public involvement in the decision making process but key interests such as northern counties are nowhere to be seen in the "8500 Stakeholder" process. The analytic approach to Environmental Justice issues fails to evaluate completely predictable disproportionate impacts of water transfers on the community level because the level of resolution of county-wide or regional impacts completely mask that level of impact.

Please don't rush this irrationally (and possibly illegally) segmented EIR-EIS through to certification and pretend that more careful systemic analysis of long term public interests in our water infrastructure can be put off yet again as a routine matter of public water infrastructure planning. This project is far better evaluated as a whole action in the context of systemic approaches to dealing with water supply challenges and a better understanding of changing conditions in the Delta. In this time of changing natural climate and public values, project alternatives that might not immediately occur to a clientele addicted to ever-growing new supplies of water must be considered.

Thanks for the opportunity to comment on this document.

Sincerely,

Michael Warburton
Executive Director