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February 7, 2006

Paul Marshall
California Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814

Sharon McHale
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Re: South Delta Improvements Program Draft EIS/EIR

Dear Ms. McHale and Mr. Marshall:

Introduction and Summary of Comments

Our firm represents Reclamation District No. 800 (Byron Tract) (the "District"), which is located on the west bank of Old River just north of Clifton Court Forebay. The District includes approximately 6,500 acres of land in agricultural production and is home to approximately 10,000 people in the community of Discovery Bay. The District appreciates the effort by the California Department of Water Resources (the "Department") and the United States Bureau of Reclamation ("Reclamation") to describe for the public the potential impacts of the South Delta Improvements Program ("SDIP").

The District has reviewed the Draft EIS/EIR for the SDIP (the "Draft EIS/EIR") in order to determine the potential impacts of the SDIP on the District. Specifically, the District is concerned that the full implementation of SDIP could have adverse effects on: (i) water levels in the southern and western Delta, (ii) water circulation within Discovery Bay, (iii) the quality of water used for agricultural production in the District, (iv) recreational boating in the Delta and (v) navigation in the Delta for the purpose of maintaining and repairing the District's levees. The Draft EIS/EIR indicates, based on modeling results, that SDIP will not have any of these adverse effects. Given the many uncertainties regarding the Delta, the District is willing to not to contest the impact conclusions of the Draft EIS/EIR but requests that the two Lead Agencies enter into discussions with the District aimed at including performance standards in the Final EIS/EIR that will guarantee that implementation of SDIP will not have an adverse effect on the District.

1. *Potential Impacts of Concern to the District.*

As noted above, the District is concerned about five potential physical changes in the environment that could result from the implementation of SDIP.

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First, SDIP could have an adverse effect on the environment by lowering water levels in the south and western Delta. A reduction in water levels would directly interfere with navigation. Recreational boating in Discovery Bay is a primary activity of the District's residents; it is reasonably foreseeable that the District would need to dredge some or all of the channels within Discovery Bay in order to preserve the ability of the District's residents to use their boats. Further, with regard to the agricultural diversions within the District, a reduction in water levels – especially at Italian Slough – could result in water levels that would interfere with the siphons that deliver water via gravity to crops. The gravity-operated siphons are highly sensitive to changes in water levels and are dependent on head differential to operate properly. Landowners in the District rely on the siphons to distribute agricultural water; it would be difficult – if not impossible – for those landowners to connect to an electrical system that would serve a pumping plant. The potential interruption of water supplies would lead to a reduction in crop yields and an adverse financial impact on growers.

Second, SDIP could have an adverse effect on the environment by interfering with the circulation of water within Discovery Bay. The District circulates approximately 42 million gallons per day of water through Discovery Bay; it is that circulation of water through the development that, save in rare cases, prevents stagnant water and algae blooms. The District's system of siphons was designed during the 1960's with then-current water levels as part of the design criteria. As previously explained, the District's siphons are sensitive to water level fluctuations. A reduction in water surface elevations, as proposed by SDIP, would lead to a reduction in the head differential between different portions of Discovery Bay and a consequent reduction in the effectiveness of the water circulation system. Such a change could well lead to more widespread areas of stagnant water, more frequent algal blooms and poorer overall water quality.

Third, SDIP could lead to a reduction in water quality in the western Delta. The District is aware that there is a present controversy in that the California State Water Resources Control Board has issued a proposed Cease and Desist Order against the two Lead Agencies for violations of water quality standards in the Delta. Any reduction in water quality that might result from the implementation of SDIP would aggravate this existing condition. Particularly in the southern portion of the District, a reduction in water quality (or, put otherwise, an increase in salinity), could have an adverse impact on crop yields or cropping mix on agricultural lands.

Fourth, SDIP could impede recreational boating in the Delta by preventing (or at least making more difficult) movement from the western and southern Delta to the San Joaquin River. The installation of the permanent barriers, even with locks that are designed to provide passage for recreational boats, will impede navigation in the Delta.

Fifth, lowered water surface elevations could interfere with the District's maintenance of its levee system. The District must be able to access the levees by barge to perform necessary maintenance and repairs. Lowered water levels caused by the installation of permanent barriers

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and/or increased pumping may well impede the District's ability to access its levees for this purpose.

2. *Thresholds of Significance*

In each of these cases, the Draft EIS/EIR has adopted a threshold of significance. The District concurs with the general intent of these thresholds, which establish that any change from present conditions is considered to be a significant adverse effect on the environment. The following table shows the threshold of significance for each of the foregoing impacts.

Impact	Threshold of Significance
Reduction in water levels	"A project alternative is considered to have a significant effect on local channel hydraulics if it would cause local tidal flows to substantially exceed the historical range of tidal levels or to be substantially reduced below historical tidal levels." Draft EIS/EIR at 5.2-42 to 5.2-43.
Interference with water circulation	Same as reduction in water levels. Also, "[a] project alternative is considered to have significant impact on tidal circulation flows [and hence on the Discovery Bay siphon system] if it would cause monthly average tidal flows to be reduced substantially below historical tidal flows. . . There is considerable natural variability in tidal conditions. A 10% threshold is selected to distinguish an impact from this natural variability. A reduction in simulated average tidal flows of more than 10% was assumed to be substantial." Draft EIS/EIR at 5.3-31.

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Impact	Threshold of Significance
Reduction in water quality	“Increases in EC values that result in exceedance of the maximum objective at specified locations in the Delta are considered to be significant water quality impacts. Monthly changes in EC values are also considered to be significant if they exceed 10% of the applicable objective.” Draft EIS/EIR at 5.3-22.
Interference with recreational boating	“Impacts on both water-dependent and water-enhanced recreation opportunities may be considered significant if implementation of an alternative would cause a change in south Delta flows, or reservoir surface water elevations that would result in substantial changes to existing recreational opportunities.” Draft EIS/EIR at 7.4-19.
Interference with non-recreational navigation	“[A] project may be considered to have a significant effect on the environment if it would result in. . . impedance of navigational craft as a result of cofferdams, or the staging of barges in navigational sections of the South Delta waterways; impedance or blockage of navigational craft in the Delta channels where the fish control gate and flow control gates are installed; and safety conflicts by operating large, slow-moving dredging equipment on Delta waterways.” Draft EIS/EIR at 5.8-9 to 5.9-10.

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3. *Adoption of Performance Standards.*

The Draft EIS/EIR concludes that SDIP will not have a significant adverse effect on the environment in any of the areas of concern to the District. Specifically, the Draft EIS/EIR described the impacts of SDIP on water levels as less than significant at pages 5.2-46; 5.2-52; 5.2-54; 5.2-55; 5.2-59; 5.2-61. The Draft EIS/EIR found that there would be no significant effect on the water available for agricultural diversions due to Phase I at pages 5.1-33 – 5.1-34. The Draft EIS/EIR acknowledged that there could be impacts from Stage 2, but failed to prescribe any mitigation measures at this time. Draft EIS/EIR at 5.1-35 – 5.1-37; 5.1-41 – 5.1-42; 5.1-44 – 5.1-45; 5.1-45 – 5.1-46; 5.1-47; 5.1-48. The Draft EIS/EIR found that impacts to water quality were less than significant at pages 5.3-31; 5.2-39; 5.3-44; 5.3-47; 5.3-49; 5.3-51 – 5.3-52; 5.3-54; 5.3-55; 5.3-58. The Draft EIS/EIR found that impacts to recreational boating were less than significant at pages 7.4-21 – 7.4-22; 7.4-23; 7.4-24; 7.4-26. Finally, the Draft EIS/EIR found that the impacts on non-recreational navigation in the Delta were less than significant at pages 5.8-14; 5.8-16 – 5.8-17; 5.8-18; 5.8-19; 5.8-21; 5.8-22 – 5.8-23.¹

The Department and Reclamation are well-aware that there is presently substantial scientific uncertainty and public controversy regarding the cause(s) of declining fish populations in the Delta. It is rare to find a day without an article in the Department's clipping service discussing questions or controversies relating to the Delta. This uncertainty is aggravated by the cumulative nature of impacts in the Delta. SDIP's impacts on the environment cannot be gauged in a vacuum. Over the past fifty years – indeed, over the past 150 years – there have been a very large number of projects that have had physical impacts on the Delta and that have modified the Delta's environment. The District's modeling indicates that the cumulative impacts of the projects over the past fifty years in combination with SDIP have resulted in decreased water levels in Discovery Bay of up to 1.0 foot and up to 1.5 feet in Italian Slough. Accurately predicting the potential impacts of SDIP on such an environment is a daunting task, but significant cumulative impacts, such as these decreases in water surface elevations, must be addressed. In light of this uncertainty, the District wishes to ensure that SDIP, if implemented, in fact does not have adverse effects on the District.

Accordingly, the District hereby requests the opportunity to meet jointly with the Department and Reclamation to cooperatively develop performance standards that would be included in the Final EIS/EIR and that would guarantee that SDIP performs as well in practice as described in the Draft EIS/EIR. Data that the District has collected through its cooperative water level monitoring program with the Department is appropriate information for discussion and upon which to base the development of the performance standards. The District will also share any

¹ The District notes that the threshold for significance of non-recreational navigation does not identify a threshold for the potential effect of impeded navigation due to more shallow water. The District proposes that developing an appropriate standard for this effect be part of the discussion of performance standards among the District, the Department and Reclamation.

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additional information it has as a part of the discussions. In particular, the District proposes that we discuss performance standards for: (i) variations in water levels at several points within the District, (ii) water quality in Old River, and (iii) navigational access to the Delta from Discovery Bay. Such performance standards, of course, would be consistent with all applicable provisions of local, state and federal law.

Please contact the District's Manager, Jeffrey Conway at (925) 634-2351 at your earliest convenience so that we may begin the process of developing appropriate performance standards.

Very truly yours,

DOWNEY BRAND LLP



David R.E. Aladjem

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cc: Board of Trustees
Jeffrey Conway
Christopher Neudeck