



DEPARTMENT OF CONSERVATION
STATE OF CALIFORNIA

March 11, 2004

DIVISION OF
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PROTECTION

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Mr. Tirath Pal Sandhu, Project Manager
In-Delta Storage Program
Department of Water Resources
901 P Street
Sacramento, CA 95814

Subject: In-Delta Storage Project

Dear Mr. Sandhu:

The Department of Water Resources (DWR) in coordination with U.S. Bureau of Reclamation and the California Bay-Delta Authority has prepared documentation evaluating whether the Delta Wetlands Project meets the California Bay-Delta Authority's water supply reliability and ecosystem restoration objectives. It is our understanding that the purpose of the In-Delta storage is to help meet the ecosystem needs of the Delta, the Environmental Water Account and the Central Valley Improvement Act goals, provide water for use within the Delta and increase reliability, operational flexibility and water availability for the south of the Delta water use by the State Water Project and the Central Valley Project.

Bacon Island and the Webb Tract are proposed as reservoir islands. Holland Island and Bouldin Island are proposed as habitat islands. The California Bay-Delta Authority is considering the lease or purchase of the Delta Wetlands Properties, Inc., to develop and market a water storage facility in the Sacramento-San Joaquin Delta. The "In-Delta Storage Program Feasibility Study Draft Summary Report", and the Draft Summary Report for the Integrated Storage Investigations were distributed for agency review and comment in 2003.

The Department of Conservation (Department) is responsible for monitoring farmland conversion on a statewide basis and administering the California Land Conservation (Williamson) Act. The In-Delta Storage project involves the conversion of approximately 15,000 acres of prime agricultural land to non-agricultural uses. All of Bouldin Island, most of Bacon Island and a portion of Webb Tract are under Williamson Act contract.

As history, the State Water Resources Control Board (SWRCB) acted as lead agency in preparation of an environmental impact statement/report (EIR) for the Delta Wetlands Project, and Water Rights Decision D-1643 was approved. The SWRCB adopted a Statement of Overriding Considerations that indicates that there would be significant impacts to agricultural resources that will not be mitigated. Regardless of SWRCB's adoption of the Statement of Overriding Considerations, in accordance with CALFED's Record of Decision (ROD) mitigation measures must be considered, and must be consistent with the ROD.

We offer the following comments:

- Mitigation measures: The Department encourages the use of agricultural conservation easements on land of at least equal quality and size as partial compensation for the direct loss of agricultural land. Further, when a Williamson Act contract is terminated, or if growth-inducing or cumulative agricultural impacts are involved, the ratio should be increased. The current document (Executive Summary and Environmental Evaluations section) indicates that the purchase of agricultural easements as mitigation is being considered, however, no details are provided in the scope of the document. Where would these easements be located? Which governmental entities are involved? Do the mitigation measures include protecting farmland in the project area or elsewhere in the County through the use of 20-year Farmland Security Zone contracts (Government Code section 51296 et seq.) or the establishment of other Williamson Act contracts as per Government Code section 51200 et seq.? Although the document discloses that there would be substantial acreage converted from agriculture, it remains vague in identifying specific measures that would actually mitigate for the loss of agricultural resources. A proposed project's merits alone do not alleviate the need for mitigation. Additionally, the cost for mitigation should be included as part of the overall planning and implementation of a project.

Although the direct conversion of agricultural land and other agricultural impacts are often deemed to be unavoidable by an agency's analysis, implementation of mitigation measures must be considered, and the adoption of a Statement of Overriding Considerations does not mean that an agency may avoid implementing feasible mitigation measures that lessens a project's impacts. The California Environmental Quality Act's (CEQA) Guidelines section 15370 describes what mitigations are intended to do; "avoid, minimize, rectify, reduce or eliminate or compensate" an impact.

- Williamson Act Lands: A project is deemed to be of statewide, regional or area-wide significance if it will result in cancellation of a Williamson Act contract for a parcel of 100 or more acres [CEQA Guidelines section 15206 (b) (3)], and requires circulation of a document through the State Clearinghouse for agency

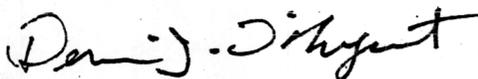
review and comment. If lands under Williamson Act contract exist on or adjacent to the project area, the Department recommends that a discussion of the contracts that would be terminated in order to accommodate the project be included in the documentation. The document mentions that the project sites are under contract, but does not provide a discussion. What are the potential impacts on nearby properties under contract resulting from termination of Williamson Act contracts? There may be significant cumulative impact on a region or area's ability to maintain the agricultural uses in the event that two islands are used as reservoir islands and two other islands are converted to habitat.

- A Williamson Act contract is an enforceable restriction pursuant to Article XIII, Section 8 of the California Constitution and Government Code section 51252. There are several ways to terminate a Williamson Act contract. According to the California Supreme Court, non-renewal is the preferred method of terminating Williamson Act contracts. Cancellation is to be used only in extreme circumstances, where the landowner lacked foreknowledge of future land uses. As an environmental impact report/statement was prepared for the Delta Wetlands Project in 1995, an extreme circumstance does not exist. Assuming that other requirements have been met, acquisition of contracted land by a public agency must also meet the requirements set forth in Government Code section 51295 in order to void the Williamson Act contract.
- The Bouldin and Holland Tracts are proposed as habitat islands. Have the lead agencies given serious consideration of the use of a publicly owned tract or island already (Sherman Island, most of Twitchell Island, for example) for habitat, so that Bouldin and Holland Tracts remain in agricultural production? Is there potential to keep a substantial portion of the lands in agriculture or manage the land as wildlife friendly farming operations? Are any alternatives to conversion to habitat being considered so that habitat and agricultural activities can coexist?

We respectfully request that any further documentation prepared for this project be sent to this Division for review. As stated previously, the Department would be pleased to offer technical assistance in the development of mitigations for agricultural impacts to either the SWRCB or DWR.

Thank you for the opportunity to review this document. Please contact Jeannie Blakeslee at (916) 323-4943 if you have any questions regarding these comments.

Sincerely,



Dennis J. O'Bryant
Acting Assistant Director