



Lower Sacramento River – Delta North Region

August 19, 2019

Sent Via Electronic Transmittal

Erin Mullin, P.E., Senior Engineer
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

SUBJECT: Lower Sacramento River/Delta North Regional Flood Management Program Team Comments on the Proposed Rulemaking to Implement Delta Plan Amendment Regarding Delta Levees Investment Strategy

Dear Ms. Mullin:

Thank you for providing the opportunity to comment on the Delta Stewardship Council's (DSC) proposed changes to Section 5012 (State prioritization in Delta levee operation, maintenance, and improvements) and Section 5001 (definitions) in Title 23 of the *California Code of Regulations*, regarding the implementation of the Delta Levees Investment Strategy (DLIS).

The Lower Sacramento River/Delta North Flood Management Program Region encompasses portions of Yolo, Solano, Sacramento, and Sutter counties along the Sacramento River, from Knights Landing to Sherman Island, and includes the Yolo Bypass. The entire Region is a part of a complex and sophisticated flood control system. Comprised of representatives from local land use and flood control agencies, the Lower Sacramento River/Delta North Regional Flood Management Program Team (LSDN Team) has participated in coordination meetings and working sessions related to flood risk reduction in the Delta, including the development of the DLIS. The LSDN Region recognizes the critical importance of the Delta levees, which includes several "very high" and "high" DLIS priority investment classifications. The Delta has benefited from the funding provided to all Reclamation Districts regardless of the investment classification, primarily through the Subventions Program. The LSDN Team supports continued investment in their operations, maintenance, and improvements.

The LSDN Team is concerned that the proposed amendments undermine our efforts to support the State in implementing the *Central Valley Flood Protection Plan (CVFPP)*. On page 10, the DSC's Initial Statement of Reason states that the purpose of the Section 5012 amendment

is to implement and make specific Water Code Section 85306's authority to set priorities for State investments in levee operation, maintenance, and improvements. However, Water Code Section 85306 does not give the DSC authority to *set* these priorities; it merely gives DSC the authority to make recommendations. Furthermore, the Statement of Reason states on page 17 that Section 5012(b), Subsection (1), directs the California Department of Water Resources (DWR) to fund projects at Very-High Priority islands or tracts before approving projects at High Priority or Other Priority islands or tracts. It also asserts that if the available funds are sufficient to fully fund levee improvements at the Very-High Priority islands or tracts, then funds for improvements or rehabilitation of levees on High Priority islands or tracts may be provided, and that after those projects have been fully funded, the projects at Other Priority islands or tracts may be funded. However, whereas Water Code Section 85210 identifies the DSC's mission, duties, and responsibilities, it does not grant the DSC the authority to direct DWR's flood improvement funding programs. Neither is this authority granted in Water Code Section 85306, to which the Statement of Reason also refers.

In addition, the LSDN Team is concerned that the proposed amendments are inconsistent with the requirement in Water Code Section 85306 that the DSC consult with the Central Valley Flood Protection Board (CVFPB) in recommending priorities for State investments in levee operations, maintenance, and improvements in the Delta. In their resolution adopting the *CVFPP 2017 Update*, the CVFPB identified that the highest priorities to advance, prior to the *2022 Update*, are the funding, and operation, and maintenance of the State Plan of Flood Control (SPFC). The SPFC includes levees throughout the entire Delta, not just in areas designated as High Priority by DSC. This rulemaking will only weaken the partnership between the DSC, the CVFPB, and DWR, in providing necessary flood risk management to Delta levees and may lead to the ultimate decline of the Delta. The LSDN Team believes that sound flood risk management through multiple agency collaboration is at the center to accomplishing the State's goal to protect the Delta as a place.

The Delta Plan provides generic definitions for "levee improvement", "levee maintenance", and "levee rehabilitation". In the rulemaking, the proposed definitions are not aligned with the existing Federal Regulations (33 CFR 208.10), and the California Water Code (Title 23) already defines "Maintenance". Section 12981 of the Water Code describes the intention of the State to maintain the Delta in its current configuration. Water Code Section 12983 describes the work covered as maintenance and rehabilitation of existing levees through the Subventions Program, thus limiting the liability of the State as long as funds are provided to support the existing levee system. Furthermore, this proposed amendment is in direct conflict with the CVFPB's *Resolution No. 2018-06*, which defines operations, maintenance, repair, rehabilitation, and replacement (OMRR&R), and identifies the CVFPB's requirement to meet their responsibility for OMRR&R for SPFC facilities, as well as the importance of obtaining active status in the U.S. Army Corps of Engineers (USACE) P.L. 84-99 program. The Reclamation Districts must adhere to the policies set by the CVFPB or they risk being taken over

and becoming the responsibility of the State. Proposing new definitions in the California Code will severely limit maintenance of levees in the Delta and will lead to further disagreement regarding how investment decisions are made for levee operations, maintenance, and improvements.

The State must be aligned on future investments to Delta levees, as it is critical to the continued functionality of the flood system. If we are interpreting this correctly, several hundred miles of levees that make up the SPFC would be given “other priority” status by the DSC, thus impacting potential OMRR&R funding. Through this proposed rulemaking, these “other priority” levees will have to take a “wait and see approach” to maintenance efforts, which may no longer be eligible to receive funding through Subventions or other DWR funding programs. This would heighten the State’s risk of liability and ultimately increase the flood risk to urban areas, legacy communities, and the Delta.

The LSDN Team has been coordinating with many of the Reclamation Districts in our Region affected by the proposed rulemaking. We urge you to seriously consider their comments and suggested revisions to the proposed language. We ask that the Subventions Program and OMRR&R for SPFC project levee systems be exempt from the prioritization scheme, and that the definitions be modified to be consistent with existing law. Furthermore, we request you extend the comment period, and recommend that you work very closely with your partner agencies, DWR, and CVFPB in developing priorities and a funding program that can be endorsed by all.

We look forward to further coordination with you and your staff. If you have any questions regarding this letter, please feel free to contact Nicole Ortega-Jewell at MBK Engineers, (916) 437-7537.

Sincerely,



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