

# LOCAL AGENCIES OF THE NORTH DELTA

1010 F Street, Suite 100, Sacramento, CA 95814  
(916) 455-7300, osha@semlawyers.com

December 12, 2014

SENT BY MAIL & EMAIL (randall.fiorini@deltacouncil.ca.gov)

Chair Randy Fiorini  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814

RE: December 18, 2014, Agenda Item 8  
Levee Prioritization Modeling Comment

Dear Chair Fiorini:

The November 12th, and December 8th, 2014 Delta Levees Investment Strategy Workshops provided by the Delta Stewardship Council (“Council”) were a useful initial step to develop what could be a powerful tool for assessing relative values for levee investment in the Delta. However, to achieve those objectives, several issues need to be resolved or clarified.

Local Agencies of the North Delta (“LAND”) was delaying these comments until the Council provided responses to the previous comments by LAND (October 27, 2014) and others prior to the December 18th Council meeting. As those responses are not yet posted, we are submitting these comments prior to reviewing responses. LAND would urge more rapid disposition of comments in the future so that the discussions at the meetings can be better informed.

1. The Council should use its Issue Paper (issues) to articulate not just Council policy, but to provide the foundation for the technical analysis of the Delta Levee Investment Strategy. The current split process misses significant opportunities for learning and improvements in the technical analysis and policy formation.

The public comments on the issues policy document need to be provided to the Delta Levees Investment Strategy team to inform the technical analysis. Conversely, the comments to the Delta Levees Investment Strategy team on the effectiveness of the analytical tools, as well as the technical and the policy problems should be provided to the issues staff to improve their process.

LAND respectfully requests that the proposed Council approval of the issues policy be delayed until the substantive technical problems with that document and its approach are at least clarified and discussed, if not fully addressed.

2. The Council is working on the Delta Levee Investment Strategy to meet the legislative requirements, yet appears to be ignoring the existing state and federal prioritization process for levee investments and instead choosing to create a new strategy without understanding and acknowledgement of the strengths and weaknesses of the current approaches.

The Department of Water Resources (“DWR”) Subventions funding process and the various DWR levee grant programs consider risk, economic factors and environmental benefits. These programs are a tremendous success and have demonstrated the effective and wise use of public funding for levees.

Yet, the issues paper has not identified what specific elements of the statutory requirements that these current processes fail to meet. The issues paper has also failed to identify how the additional statutory requirements under California Water Code section 85054 that “[t]he coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place” will be met by the proposed Council Investment Strategy. As a result, the Council is pushing what appears to be a political process ahead of the effective existing system to fund levees. Council staff have also repeatedly described a “need” to take these policy changes to the state Legislature. Staff appear to have determined that changes are required and legislative “fix” is required even before the analysis has begun.

The Council has statutory authority to set levee priorities and make recommendations. It does not need any additional legislative authority. It appears that the Council is headed on a major deconstruction of the existing, successful levee funding process (perhaps to meet its own political aims), without satisfying the requirements under Water Code section 85054.

3. The proposed original island by island analysis was modified, but this change was not evident until repeated exchanges on the topic. The issues and technical teams should coordinate their message and approach so that the proposed analysis matches what is supposed to be analyzed.

4. The use of the RAND model for individual “project” analysis needs significant conceptual development before it would have much application for project-level levee investment prioritization. It appears even with significant development to be

a stronger tool for regional analysis, if developed with appropriate parameters and metrics.

Regarding the model's use and implementation, as Dr. Lund identified, the capacity of Council staff to be able to manage a complex data set and adjust the model over time seems like a potentially ineffective and inefficient use of resources. It would make much more sense to retain the existing technical team to develop and maintain the model for the initial Five Year cycle.

As provided in LAND's prior October 27, 2014, written comments, there is a critical need for ISB/Peer Review, not just of the model selection (methodological approach), but of the model itself, model inputs and model results, which was made abundantly clear in the public presentations. The methodological approach seemed generally appropriate, but the model parameterization and drivers are what generate the outcomes and that selection process is not clear at this time. There also appears to be a fatal mismatch between the model parameters and the statutory requirements, which must be resolved before this model could be used with any credibility.

5. As just one illustration of what has been a consistent failure of the Council to develop policy that truly reflects the statutory requirements, agricultural benefits for terrestrial species appear to be ignored and aquatic species prioritized. This error was somewhat reflected in the DFW comments, which were then added to the redline draft version of the Issue Paper. Even this fig leaf fails to discuss the relative benefits provided by agriculture to both terrestrial and aquatic species, and still does not fully identify the affected listed terrestrial and riparian species. The continued and biased emphasis of speculative benefits to aquatic species and for aquatic habitat does not bode well for the thoroughness of the analysis.

6. The levee prioritization model appears to be largely based on DRMS work product without the changes that have been repeatedly requested of DWR by Reclamation District engineers. And, the use of the Reclamation District Five Year plans seems inappropriate given that they were not developed for this type of "planning" context. We urge the Council to continue to engage the Reclamation District engineers on these issues.

\* \* \*

Chair Randy Fiorini  
December 12, 2014  
Page 4 of 4

LAND appreciates the opportunity for comment and looks forward to further engagement on these issues.

Very truly yours,

**SOLURI MESERVE**  
A Law Corporation

By:   
Osha R. Meserve

cc (via email): Melinda Terry, California Central Valley Flood Control Association,  
[melinda@floodassociation.net](mailto:melinda@floodassociation.net)  
Gilbert Cosio, MBK Engineers, [Cosio@mbkengineers.com](mailto:Cosio@mbkengineers.com)