

**DELTA PROTECTION COMMISSION**

2101 Stone Blvd., Suite 210  
 West Sacramento, CA 95691  
 (916) 375-4800 / FAX (916) 376-3962  
[www.delta.ca.gov](http://www.delta.ca.gov)



**Mary N. Piepho, Chair**  
 Contra Costa County Board of  
 Supervisors

**Skip Thomson, Vice Chair**  
 Solano County Board of  
 Supervisors

**Don Nottoli**  
 Sacramento County Board of  
 Supervisors

**Bob Elliott**  
 San Joaquin County Board of  
 Supervisors

**Oscar Villegas**  
 Yolo County Board of  
 Supervisors

**Norman Richardson**  
 Cities of Contra Costa and  
 Solano Counties

**Christopher Cabaldon**  
 Cities of Sacramento and  
 Yolo Counties

**Anthony Silva**  
 Cities of San Joaquin County

**Michael Scriven**  
 Central Delta Reclamation  
 Districts

**Justin van Loben Sels**  
 North Delta Reclamation Districts

**Robert Ferguson**  
 South Delta Reclamation Districts

**Brian Kelly**  
 CA State Transportation Agency

**Karen Ross**  
 CA Department of Food and  
 Agriculture

**John Laird**  
 CA Natural Resources Agency

**Brian Bugsch**  
 CA State Lands Commission

July 1, 2015

Ms. Cindy Messer  
 Deputy Executive Officer – Planning  
 Delta Stewardship Council  
 980 9th Street, Suite 1500  
 Sacramento, CA 95814

Dear Ms. Messer:

On behalf of the Delta Protection Commission (the Commission), I am submitting these comments on the Notice of Preparation (NOP) for the scope and content of the Environmental Impact Report (EIR) that will be prepared for the update to the Delta Levee Investment Strategy Policy (DLIS Policy). Our comments will describe the Commission's statutory responsibilities and policies, as well as its role in the DLIS and the Delta Flood Risk Management Assessment District Feasibility Study (Feasibility Study). We will also mention procedural and methodological concerns about the DLIS process that we expect to resolve as we work in coordination with the Delta Stewardship Council (the Council) on the DLIS and Feasibility Study.

### **Statutory Responsibilities**

State law declares that the coequal goals for the Delta are to 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" (Public Resources Code (PRC) Section 29702). The law also recognizes the Commission as "the appropriate agency to identify and provide recommendations to the Delta Stewardship Council on methods of preserving the Delta as an evolving place" as the Council implements the Delta Plan (PRC Section 29703.5). In addition, the Commission has authority to review and provide comments and recommendations to the Council on "any significant project or proposed project within the scope of

the Delta Plan...that may affect the unique cultural, recreational, and agricultural values within the primary and secondary zones” (PRC Section 29773).

The Commission’s role in protecting “Delta as Place” appears several times in statute. In 2009, the Legislature required the Commission to prepare and adopt an economic sustainability plan (ESP), which must include “information and recommendations that inform the Delta Stewardship Council’s policies regarding the socioeconomic sustainability of the Delta...” (PRC 29759). State law also calls upon the Commission to develop “a proposal to protect, enhance, and sustain the unique cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving place, in a manner consistent with the coequal goals” (Water Code Section 85301). The Commission prepared and submitted this proposal, which included the ESP, to the Council in 2012. The Council accepted many of the proposal’s recommendations for inclusion in the Delta Plan, including recommendations to promote tourism and recreation, creation of a National Heritage Area, designation of State Route 160 as a National Scenic Byway, and planning for the preservation of Legacy Communities in the Delta.

In addition, the Commission has statutory authority over land uses in the primary zone of the Delta. The Commission’s Land Use and Resource Management Plan (LURMP) must include provisions to “restore, improve, and manage levee systems by promoting strategies... which advance the adoption and implementation of coordinated and uniform standards among governmental agencies for the maintenance, repair, and construction of both private and public levees” (PRC 29760 (4)).

#### **Delta Protection Commission Policies**

The Commission supports the improvement, emergency repair, and long-term maintenance of Delta levees and channels. The LURMP expresses the Commission’s goal “to promote levee maintenance and rehabilitation to preserve the land areas and channel configurations in the Delta as consistent with the objectives of the (Delta Protection) Act” (LURMP page 28). Applicable policies for levees include:

- Levees Policy P-3: Support a multi-year funding commitment to maintain and restore both project and non-project levees in the Delta; and
- Levees Policy P-8: Seek funding for and support programs to make cost-effective levee investments in order to preserve the economy and character of the Delta.

The Commission’s ESP policies reflect its obligation to protect the Delta as an evolving place. In particular, the ESP contains recommendations for levees and public safety, including:

- Improve and maintain all non-project levees to at least the Delta-specific PL84-99 standard; and
- Improve most “lowland” levees and selected other levees to a higher Delta-specific standard that more fully addresses the risks due to earthquakes, extreme floods, and sea-level rise, allows for improved flood fighting and emergency response, provides improved protection for legacy communities, and allows for growth of vegetation on the water side of levees to improve habitat.

Although the Council deferred action on these recommendations in preparing the Delta Plan, they remain in effect as policy goals for the Commission.

### **The Commission’s Role in the DLIS**

The Commission is coordinating with the Council on the development of the DLIS risk assessment methodology. Our staff works closely with the Council’s project manager and consultants to ensure that the DLIS and Feasibility Study use consistent approaches. Both studies will rely on a common definition of Beneficiaries of Delta levees. Both studies will also rely on a common cost allocation methodology to evaluate the costs associated with state interests as well as local interests in levees.

One of the most significant aspects of the DLIS is the definition of state interests. To date, the DLIS methodology has not defined state interests other than as broad categories, including public health and safety, ecosystem restoration, water supply reliability, and the “Delta’s economic well-being, unique values, and agricultural resources.” As you know, many Delta residents are concerned about the relative priorities to be assigned to these different state interests. We share their concerns, and would like to see further refinement of the definition—possibly quantifying or weighting these interests in the risk assessment methodology—as well as a discussion of how, where, and to what degree non-project levees protect these interests.

Without further defining “state interests,” it will be difficult to allocate levee project costs in both the DLIS and Feasibility Study in a manner consistent with state law, which requires achievement of the coequal goals “while protecting and enhancing the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place” (PRC 29702). We will continue to work with Council staff and consultants as we move forward with the DLIS and Feasibility Study to resolve these concerns.

I recently submitted comments on the Council’s draft “Delta Flood Management Investment Strategy Principles.” The comments noted our support for the development of principles to guide the levee investment strategy. However, I urged that those principles be based upon the analysis of the risk reduction

potential of various investment strategies that will occur through the DLIS, rather than precede the analysis. I reiterate that concern here, insofar as the draft Principles failed to include "Delta as Place" as a significant component of the state's interest in Delta levees.

#### **Scope and Content of the EIR**

Given the Commission's role in the DLIS and Feasibility Study, as well as our statutory authorities, the EIR should address the following issues:

1. The EIR should describe the way in which the DLIS defines and quantifies state interests in Delta levees. The EIR should include enough background information and detail so that the reader can comprehend the DLIS interpretation of state interests without having to refer to multiple technical reports produced by the DLIS consultants.
2. The EIR should examine, at a programmatic level, how varying definitions of state interests might affect the formulas for funding the Delta Levees Subvention and Special Projects programs.
3. The EIR should describe the impacts of *not* funding levee enhancement work in the Delta, in terms of damages on or to the lands and levees on neighboring islands due to levee failures; increased costs to local maintenance agencies and other Beneficiaries; and potential increased risk to residents and property.
4. The EIR should describe the Delta Plan's applicable regulatory and statutory authority to affect the Subvention and Special Projects programs and what, if any, legislative changes would be required to implement the proposed DLIS Policy.
5. The EIR should evaluate the effects of the DLIS Policy on the Delta in terms of the requirement in PRC Section 29702 that the 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."

Thank you for the opportunity to comment on the NOP. If you have any questions, please contact Jennifer Ruffolo, at (916) 375-4882 or [jennifer.ruffolo@delta.ca.gov](mailto:jennifer.ruffolo@delta.ca.gov).

Sincerely,



Erik Vink  
Executive Director

cc: Commission Chair and Councilmember Mary N. Piepho