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July 3, 2015

SENT VIA EMAIL (DLIS NOP comments@deltacouncil.ca.gov)

Cindy Messer
Deputy Executive Officer – Planning
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

RE: Delta Levee Investment Strategy Policy EIR

Dear Ms. Messer:

These comments on the Delta Stewardship Council’s Notice of Preparation (“NOP”) for preparation of an Environmental Impact Report (“EIR”) for the Delta Levee Investment Strategy Policy (“DLIS Policy” or “Project”) are submitted on behalf of the Local Agencies of the North Delta (“LAND”).¹ LAND has previously commented extensively on the various and disjointed aspects of the DLIS process;² this letter focuses on the NOP and the process under the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq. (“CEQA”)).

Project Description

An accurate project description is critical to environmental review. (See CEQA Guidelines, § 15124; see also *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 89 (project description inadequate for confusingly and incoherently describing the project’s characteristics and failing to provide an adequate statement of project objectives).) The NOP describes the Project as:

¹ LAND member agencies cover an approximately 118,000 acre area of the Delta; current LAND participants include Reclamation Districts 3, 150, 307, 317, 349, 407, 501, 551, 554, 556, 744, 755, 813, 999, 1002, 2111, 2067 and the Brannan-Andrus Levee Maintenance District. Some of these agencies provide both water delivery and drainage services, while others only provide drainage services. These districts also assist in the maintenance of the levees that provide flood protection to homes and farms.

² See comments dated October 27, 2014, December 12, 2014, June 5, 2015 and June 12, 2015; LAND also provided an suggested matrix of levee investment priority alternatives to consider in the DLIS process in March 2015, which has not been incorporated into the Council’s process.

The Council is updating the “Risk Reduction” section of its 2013 Delta Plan, which includes an interim regulatory policy for prioritizing State investments in Delta levees. The Council proposes to adopt a new policy that will replace the interim policy, Policy RR P1 (23. C.C.R § 5012). *The proposed DLIS Policy will provide a more comprehensive method to prioritize State investments in Delta levees and more specificity with regard to State interests, priority locations, and the type of levee improvements appropriate to protect State interests than the interim policy.*

(NOP, p. 3, italics added.) “Updating” and making “more comprehensive” an existing policy is not enough information on which to base a coherent environmental analysis under CEQA. The project description in the NOP fails to provide the reviewer with any understanding of how this is a “project” under CEQA, and how it interacts from an environmental impact perspective with the existing State and federal policies and programs. In addition, the “comprehensive method” as proposed lacks any sort of grounding, consistency and substantiation in comparison with existing State policies and levee funding mechanisms, and their established priorities. Additional information about the Project being proposed is necessary for environmental review to be of any utility.

Significant and Unavoidable Impacts

While not reflected in the alleged description of the Project in the NOP, it appears that the Council is proposing to develop a DLIS Policy that *reduces* the amount of funding available for levees, thereby *increasing* risks to people, property, and state interests in the Delta. Incredibly, the Council is proposing to prepare a full EIR that does not provide *any CEQA coverage* for levee improvements. (NOP. p. 6.) The Council is pointing clearly to its overt intent to significantly impact the environment of the Delta and not promote through analysis any means by which levee improvements would be covered under its analysis. This expenditure of public resources to increase risk is contrary to existing State policy. Additionally, despite the Council’s unsubstantiated assertions otherwise, funds are already available to carry out the very levee upgrades necessary to improve the majority levees in the Delta to a PL 84-99 standard, which would be adequate for much of the Delta. If the Council was to pursue a policy that actually reduced risk, the environmental impacts would be much less severe than the direction the Council appears to be headed in with this Project. In any case, the current approach to the DLIS Policy will indeed result in multiple significant and unavoidable impacts which must be fully analyzed in the EIR.

Timing Problem

As noted above, the NOP does not contain a project description. In order to conduct meaningful public review, the proposed policy direction should first be selected and disclosed to the public. Instead, the Council is developing the DLIS Policy *at the same time* (on two tracks, at the staff level and at the Council level) as the environmental review is conducted. Such an approach virtually ensures a confusing and useless CEQA process. Additionally, it appears that the alternatives considered in the CEQA process will be different than those selected earlier this year for DLIS Policy consideration.³ For the analysis to be meaningful, alternatives in an EIR should be capable of being implemented and should be developed in relation to a firm project description and clear project objectives. It does not appear that approach is being taken here.

Statutory Consistency

Again, while not reflected in the alleged description of the Project in the NOP, it appears that the Council is proposing to develop a DLIS Policy that *reduces* the amount of funding available for levees, thereby *increasing* risks to people, property, and state interests in the Delta.⁴ This is directly contrary to state policy in Water Code section 85020, subdivision (g) and the directive regarding the Delta Plan found in Water Code section 85305, subdivision (a). Increasing risks in the Delta is also contrary to the coequal goals provision requiring achievement “in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. (Wat. Code, § 85054.) Any funding prioritization strategy for Delta levees must recognize and build upon the existing and proven successful Delta Subventions Program and be consistent with existing statutory direction on flood control.

The NOP also claims that:

The updated DLIS Policy, in combination with the *Council’s authority to require that State agencies act consistently with the Delta Plan*, would

³ See *ante*, fn. 2 re LAND’s submittal of alternative policy recommendations.

⁴ As explained in prior comments, reduction of risk to life, property and state interests must operate in concert to reduce risks, and the Council is not permitted to ignore the mandate to reduce risks to life and property in the Delta by only advancing what it considers to be “state interests”. (See Wat. Code, §§ 85305, 85020, subd. (g).)

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ensure that levee spending by DWR and the CVFPB reflects these priorities.

(NOP, p. 6, italics added.) As the Council is aware, there is no independent authority as against other State agencies outside of the covered action consistency review process (see Wat. Code, §§ 85225 et seq.).

We continue to also be concerned that the DLIS Policy development and environmental review process are not occurring according to best available science. (Wat. Code, §§ 85302, subd. (g), 85308, subd. (a).) *The Council must follow best available science* in its DLIS Policy development and in its CEQA analysis, and not simply attempt to require best available science from others entities.

To the extent additional authorities or other changes in law are contemplated or considered necessary to carry out the Project, those changes in law should be clearly described as part of the Project in the NOP so that the public can understand what is actually being proposed.

* * *

In conclusion, LAND recommends that the Council retract its NOP and address the deficiencies described above before embarking on any type of environmental review. Should the Council decide to proceed with an ill-defined and impermissible Project, it does so at its own risk from a legal perspective. Additionally, such an approach further undermines the public's confidence in the legitimacy and utility of the Council.

Very truly yours,

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By:



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